

(2008) 01 CAL CK 0037

In the Calcutta High Court

Case No : Writ Petition No. 28304 (W) of 2006 with CAN No's. 1439 of 2007 with CAN No. 2347 of 2007, W.P. No. 25248 (W) of 2006, W.P. No. 23836 (W) of 2006 with CAN No. 8742 of 2006 with CAN No. 1124 of 2007 with CAN No. 2050 of 2007 with CAN No. 2049 of 2007 with

Joydeep Mukherjee and Others

APPELLANT

Vs

State of West Bengal and Others etc. etc.

RESPONDENT

Date of Decision : 18-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 2
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 12, 13(2), 14, 166(2), 166(3)
General Clauses Act, 1897 — Section 3(1), 3(31)
Income Tax Act, 1961 — Section 10
Land Acquisition (Companies) Rules, 1963 — Rule 3, 4, 5
Land Acquisition Act, 1894 — Section 11, 11(1), 11(2), 11(4), 11A
Land Development Act — Section 4, 6
Penal Code, 1860 (IPC) — Section 433A
Town and Country Planning Act, 1947 — Section 53(1)
West Bengal Land Reforms Act, 1955 — Section 15(2), 17, 2(2), 21D, 4
West Bengal Land Reforms Rules, 1965 — Rule 14I

Citation : (2008) 2 CHN 546 : (2008) 1 ILR (Cal) 461

Hon'ble Judges : Surinder Singh Nijjar, C.J.; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Anindya Mitra, Jayanta Mitra, Hirak Mitra, Debol Banerjee, Jishu Saha, Abhrajit Mitra, Swatarup Banerjee, Samrat Mukherjee, M.P. Raju, Idrish Ali, Chandreyi Alam and Aparna Samanta, in W.P. No. 28304 W of 2006, Siddhartha Sankar Ray, Somendra Chandra Bose, Sundrananda Paul, Tarun Kr. Chatterjee, Tapas Kr. Bhanja, in W.P. No. 6486 W of 2007 and W.P. No. 7048 W of 2007, Kalyan Kr. Bandopadhyay, Mintu Kr. Goswami, Jayjeet Ganguly, Somnath Roy Chowdhury and Ramanath Guha Thakurta, in W.P. No. 25625 W of 2006, W.P. No. 5267 W of 2007, W.P. No. 5268 W of 2007, W.P. No. 5269 W of 2007 and W.P. No. 8162 W of 2007, Santi Ranjan Das and Kedar Nath Yadav, in W.P. No. 23836 W of 2006 with CAN No. 8742/06 with CAN No. 5961/07 with CAN No. 1124/07 with CAN No. 4960/07, Arunabha Ghosh, Soumya Majumdar, Anindya Lahiri, Arnab Chakraborty and S.M. Obaidullah, in W.P. No. 2598 W of 2007 and Tapas Kr. Bhattacharya, in W.P. No. 25248 W of 2006, P.C. Sen, S.K. Kapur, Bhaskar Sen, S. Sarkar, Ashoke Banerjee, Saptansu Basu, Tilink Kr. Bose, Arindam Banerjee and Indranil Bose, S. Pal, S. Mitra, A. Deb, A.K. Datta, S.

Datta and K. Poddar, for the Appellant; Balai Chandra Roy, Id. A.G., Shovan Lal Hazra, Id. Govt. Pleader, Sandip Srimani, Id. Addl. Govt. Pleader, A.N. Banerjee and Sitaram Samanta, for the Respondent

Final Decision : Dismissed

Judgement

Pinaki Chandra Ghose, J.—These writ petitions were filed as Public Interest Litigations challenging the acquisition proceedings in respect of about 1000 acres of land within the following mouzas, a) Gopalnagar, b) Singherbheri, c) Beraberi, d) Khaserberi and e) Bajemelia within the Police Station of Singur in the District of Hooghly.

2. Such acquisition process has been challenged by the writ petitioners mainly on the ground that the said area of land is the source of livelihood of 10,000 agricultural households and destroying the most of fertile lands which cannot be replaced, apart from the other subsidiary industries.

3. The writ petitioners challenged the entire acquisition process on the ground of mala fide and arbitrary intention and further for violating the provisions of Article 14 of the Constitution of India. It is further stated that for setting up a Small Car Project by Tatas would have been an acquisition of land following the Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as "the said Rules") and in order to avoid the said procedure it has been stated that the acquisition will be for a public purpose, namely, for employment generation and socio-economic development of the area by setting up of a Small Car Project. It is further stated that the State of West Bengal in connivance and in collusion with the Tatas and its Chairman, pretended to make this acquisition as for a public purpose at the expenses of the Government and delivered more land for the said purpose.

4. The said notice was further challenged on the ground for non-application of mind and further the notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") is vague. Further allegation has been made that several notifications u/s 4(1) of the said Act were issued containing smaller area so that the persons interested may not be able to find out that the total area of land which are to be acquired for the said purpose. Therefore, it is stated that such notifications have been issued camouflaging the real object.

5. It is further alleged that in May, 2006, the Hon'ble Chief Minister announced that the Tatas has agreed to significantly increase their commitment in the State. He further stated that the plan would come up at Singur in the District of Hooghly. It is also alleged that the said fact would be corroborated from the statement made by the Chairman of the Tatas Motors Ltd. in the Annual Report of the said company for the year 2005-2006.

6. It is further stated that the declarations u/s 6 of the said Act are made by the

authorities so hastily so that the land owners and/or the persons interested to file any effective objections could not get any chance to file their effective objections.

7. It is further stated that the payment of money out of the public exchequer in applying Section 11(2) of the said Act and even to the persons after making payment u/s 11(1) of the said Act is illegal. It was further alleged that the notification inviting objections u/s 5A of the said Act was wholly illusory and a fraud was committed in respect of the hearing of such objections, under the said section and, therefore, the entire process is void.

8. A writ petition being W.P. No. 28304 (W) of 2007 [Joydeep Mukherjee v. State of West Bengal and Ors.] was moved on 9th February, 2007 before the Hon''ble Division Bench. A preliminary objection was taken as to the maintainability of the said writ petition by the State authority. On 23rd March, 2007, the Hon''ble Division Bench without deciding the point of maintainability, which has been kept open, directed the State Government to disclose how much of the land area out of the total 997.11 acres of land have been acquired in terms of Section 11(2) of the said Act.

9. It further appears that it has been specifically stated by the State authority in their affidavit affirmed on 23rd March, 2007 that at that point of time the Hon''ble Court raised many questions relating to the facts of the acquisition proceedings referable to Section 11 and, in particular, Section 11(2) of the said Act. It is further stated that the said questions were not subject matter of the writ petitions. Accordingly, the learned Advocate on record did not obtain detailed instructions on those points from the concerned Land Acquisition Collector.

10. However, it was submitted that at that point of time, the Hon''ble Court was misled on the erroneous submission of the learned Advocate General since he was not properly instructed and did not post with the facts and particulars of the case. Accordingly, the Court arrived at a prima facie conclusion that two awards were passed, one u/s 11(1) and the other u/s 11(2) of the said Act respectively.

11. It is also made clear from the records of the Land Acquisition Collector and on instruction, Mr. Advocate General clearly indicated that only one award was passed in respect of each land acquisition case. At that point of time, the Hon''ble Court directed to file an affidavit disclosing the facts, in particular, mentioned in (i) to (vii) of the said order passed by the Hon''ble Court on that day.

12. It was specifically stated in the said affidavit that all the awards were passed u/s 11(1) of the said Act on 23rd September, 2006 and on 25th September, 2006. On 23rd September, 2006, the awards were passed in respect of 3 land acquisition cases and on 25th September, 2006, the awards were passed in respect of 10 land acquisition cases respectively.

13. It was also specifically stated that all the persons except a few who were liable to receive the compensation by virtue of the agreement u/s 11(2) of the

Act have already received payment and the mode of payment was originally by cheques and they duly received and acknowledged the same. It was further stated that in case of the amount less than Rs. 5,000/- the payment was made mostly in cash and acknowledgment was duly received from the awardees. It is further stated that all the co-sharers of awards did not receive payment u/s 11(2) of the said Act and they proceeded in accordance with the provisions u/s 11(2) of the said Act.

14. However, it is specifically stated that the plots are owned by different co-sharers and some of the co-sharers have already accepted compensation pursuant to the agreement entered into under the provisions of Section 11(2) of the said Act but other co-sharers did not enter into such agreement and it is stated that the approximate number of such plots are 75.

15. The facts stated by the State in their affidavit that the State has taken a step for a stronger growth in manufacturing sector is required for faster industrialisation in the State. Government thought it fit to provide a big boost to the automobile sector inasmuch as the said industry in addition to direct employment also contributes significantly to indirect employment by way of manufacturing components as a result whereof in the interest of growth of manufacturing industry the State Government was keen to bring in investments in the automobile sector, it is further stated by the State that since Tata Motors have shown interest in setting up a unit in West Bengal, the State Government carried out negotiations with Tatas and on 31st of May, 2006, the State Government in its Cabinet meeting approved a proposal to set up a Small Car Project of Tata Motors at Singur in the district of Hooghly and directed the West Bengal Industrial Development Corporation Limited (hereinafter referred to as the "WBIDC Ltd."), District Magistrate and Collector, Hooghly and Joint Secretary, Government of West Bengal, Land Revenue Department to initiate proceedings to acquire 1053 acres of land in mouzas Gopalnagar, Singherbheri, Beraberi, Khaserbheri and Bajemelia, within the Police Station of Singur, in the district of Hooghly.

16. The Joint Secretary, Cell-I, Commerce & Industries Department, Government of West Bengal addressed on 6th July, 2006, a letter to the Managing Director, WBIDC Ltd., DM and Collector and Joint Secretary to the Government of West Bengal, L & LR Department, whereby the said addressees were directed to initiate acquisition proceedings in the mouzas as per the list enclosed in the said letter [a letter is appearing at page 184 of the paper book filed in W.P. No. 6486 (W) of 2007]. On 7th July, 2006, the WBIDC Ltd., a wholly-owned Government Company incorporated u/s 617 of the Companies Act, as the Requiring Body, submitted to the Land Acquisition Collector, Hooghly a package of proposals for acquisition of about thousand acres of land spreading over the five different mouzas within the Police Station of Singur. Subsequent thereto several notifications u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") were issued by the Collector and were duly published on 21st of

July, 2006 and 26th of July, 2006 in the Calcutta Gazette Notices were also published in the daily newspapers one in Bengali "Ganasakti" published on 21st, 23rd, 27th, 28th and 29th of July, 2006 and another in English "The Times of India" published on 21st, 22nd, 24th, 27th, 28th and 29th of July, 2006.

17. A corrigendum was published in the newspaper in Bengali as well as in English. On 23rd of July, 2006 and 7th of August, 2006 in Bengali in the same daily newspaper "Ganasakti" and on 8th August of 2006 in English in the same daily newspaper "The Times of India". Public notices in respect of such notifications were also issued in the locality and were published in all Gram Panchayat offices and office of the Block Development Officers. Thereafter, thirteen Land Acquisition cases were initiated in respect of such acquisition proceedings and further it was intimated that they were entitled to file the objections to proposal of such acquisition within 30 days from the date of publication of the said notification.

18. It was also mentioned that those persons who were willing to enter into an agreement in terms of Section 11(2) of the said Act, were also informed of the offices wherefrom forms for such agreement could be procured. Prior to publication of the said notices u/s 4(1) about 1010 objections in printed proforma were received by the Collector from some of the local land owners.

19. It is further the case of the respondent-authorities that though the said objections were invalid in law even then the objectors were offered hearing by the Collector between 22nd of August, 2006 and 25th of August, 2006. The dates of hearing were published in the local newspapers "Samachar" and "Hooghly Katha" on 18th August, 2006. Publication was also made in Bengali daily newspaper "Pratidin" as well as in the offices of BDOs and Gram Panchayats. However, those objectors did not appear at the hearing and the Land Acquisition Collector passed orders on those objections.

20. Subsequent to the issuance of such notification u/s 4(1) of the said Act only seven objections were received u/s 5A of the said Act. The Collector after giving them a chance of being heard, disposed of the said objections on 29th of August and 31st of August, 2006. Out of seven objectors six awardees u/s 5A of the said Act have also accepted the award and received their respective compensation money in terms of the award. Thereafter, the report of the Collector including the documents was sent to the office of the State Government. The order was also communicated to the Land & Land Reforms Department.

21. The area for acquisition was finally determined to be 997.11 acres.

22. The State Government after considering the reports containing the recommendations of the Collector on the objections and since Collector was satisfied that lands were needed for a public purpose, the declarations u/s 6 were published in the Calcutta Gazette on 30th of August, 2006 in respect of six Land Acquisition Cases and on 1st of September, 2006, declarations u/s 6 were published in respect of seven remaining. Land Acquisition Cases. The

declarations u/s 6 in respect of six Land Acquisition Cases were also published in the English daily newspaper "The Hindusthan Times" and in the Bengali daily newspaper "Ganashakti" on 30th of August, 2006. In respect of seven other Land Acquisition Cases the notifications u/s 6 were published on 1st of September, 2006 in the English daily newspaper "The Times of India" and the Bengali daily newspaper "Ganashakti".

23. It further appears that the substance of the declarations u/s 6 were also duly published on 30th of August, 2006 and 1st of September, 2006 at the offices of Gram Panchayats and in the office of the Block Development Officer. Such copies are also annexed to the affidavit filed on behalf of the State authorities. Thereafter, the order for acquisition u/s 7 of the said Act was also passed by the State Government and duly taken by the Collector.

24. The Collector, thereafter, collected requisite data from the Additional District Sub-Registers Office to reach a correct average value of each class of land. Appreciation of 2.5% to 10% were allowed and approval was granted by the State Government. Thereafter, the Collector published notices u/s 9(1) of the said Act at the offices of the BDO and three Gram Panchayats covering all the mouzas wherefrom lands were acquired. Attempts were also made to serve notices u/s 9(3) of the said Act personally to the occupiers as also upon person interested in the said land. It is admitted that service could not be effected personally by such office as violent agitation was continuing at the said area. Accordingly, the general information for hearing u/s 9 before the Collector were also published in the daily newspaper "Sambad Pratidin" on 2nd of September, 2006 and in "Ananda Bazar Patrika" on 5th of September, 2006. Pursuant to the said notice, u/s 9, on 18th of September, 2006 hearing was given to the persons who appeared before the Collector and the hearing was also given from 1st of September, 2006 to till 16th of September, 2006 at the Local Camp Office on all working days by the Collector. A large number of interested persons appeared before the Land Acquisition Collector as also at the Camp Office who were interested in filing applications for consent award u/s 11(2) of the said Act. In fact, 3124 persons who filed such forms of agreement under Sections 11(2) of the said Act. A hearing was given by the Collector to them and 2414 persons agreed to the land value offered by the Collector involving a total area of 287.52 acres. After the declaration of such award, on 23rd of September and 25th of September, 2006 no further form for agreement was accepted by the Collector.

25. It is further pointed out that in respect of each land acquisition case one award was declared by the Collector. The valuation of the land and total compensation payable in respect of those who did not enter into agreement were determined by the Collector in accordance with average valuation of the land arrived at after detailed enquiry and awarding other accretions required to be computed in accordance with the provisions of Section 23 of the said Act.

26. It is further the case of the respondent-authorities that those who entered into agreement, and those who did not, had all been awarded amounts of money

due under the provisions of Section 23 of the said Act.

27. It was further submitted that maximum 10% of the total amount calculated u/s 23 of the said Act the awardees who entered into agreement u/s 11(2) of the said Act. Names of those who u/s 11(2) of the said Act entered into agreement and those did not, were included in one and the same single award was passed in their favour. The State Government duly approved the award in its entirety and dates were announced for making payments of compensations. Such compensations have been collected and received by 10021 awardees till 25th of April, 2007 aggregating to an amount of Rs. 90,35,35,184/- covering an area of 671 acres of land. In respect of total area of 9.75 acres of land the documents produced by the claimants, claiming compensation, were not found in order. Therefore, compensation could not be disbursed to those claimants.

28. On 4th of October, 2006 the Collector took possession of the land and delivered possession of the land on the same date to WBIDC Ltd., the requiring body. It is further stated that passing of the award and taking possession of the land by the Collector, the land stood vested u/s 16 of the said Act with the State Government.

29. On 13th of March, 2007 the State Government leased out the entire land measuring 997.11 acres to WBIDC Ltd. by executing a deed of lease. Out of the said land 645.67 acres of land was leased out to Tata Motors on 15th of March, 2006. The balance acres of land have been kept reserved for ancillary industries by the WBIDC Ltd.

30. It further appears from the facts that the State Government has also directed the Collector to deposit unpaid compensation to the Court and steps have also been taken, according to the respondent, to deposit the same to the Court. It also submitted that the applications, have been filed before the Collector u/s 18 of the said Act for referring the same to the Court.

31. The State authorities submitted that this Public Interest Litigation which has been filed by the writ petitioners is not maintainable. Furthermore, the writ petitioners have no locus standi to file this application, no particulars have been specifically stated by the petitioner to represent any determinate section of the society or the poor farmers, which has not been clearly identified. It is further stated that the acquisition is made in accordance with the provisions of law and it has been specifically denied that the notification issued u/s 4(1) is vague or it is colorable exercise of power or mala fide in nature.

32. It is further stated that Part VII of the said Act has no application in the facts and circumstances of this case. It is also stated that the said Rules of 1963 have no manner of application since the acquisition was not for a company. It is further stated that the public purpose is clearly mentioned in the notification u/s 4(1) and declaration u/s 6 of the said Act for the public purpose mentioned in the declaration u/s 6 of the said Act conclusive evidence of the public purpose. The requiring body is WBIDC Ltd. which is a wholly owned Government Company.

The entire amount has been paid from the fund of WBIDC Ltd. Therefore, the compensation shall be deemed to have been paid out of the public revenue.

33. It is further stated that the acquisition has been made for public purpose and not for Tata Motors. Upon acquisition, the possession has been taken by the State and thereafter, delivery was made to the third party after the land was vested in the State. Therefore, such action on the part of the State is lawful. Acquisition in exercise of power under a valid statute cannot be said to be arbitrary and is not violative under Article 14 of the Constitution of India.

34. It is further stated that the procedure for acquisition of the land for the project was initiated by a decision of the Cabinet of Counsel of Ministers and as such the said policy cannot be challenged.

35. It is further stated that some of the writ petitioners claimed that they had filed objections u/s 5A of the Act but records of the Land Acquisition Collector do not show such objection had been filed and the petitioners have not also annexed any proof before the Court showing filing of such objections and furthermore, the petitioners are not party interested who could have filed objections u/s 5A of the said Act.

36. The writ petition, which has been filed by Kedar Nath Yadav, would also show that the said writ petition is not a bona fide one and is not maintainable as a Public Interest Litigation.

37. The writ petition so filed by Mr. Debabrata Banerjee is not maintainable for delay and laches. The petitioners claimed to have knowledge of the said project since May, 2006. The notification was published in July, 2006 and declaration u/s 6 was made on 1st September, 2006 but the said petition was filed only on 30th March, 2007. Therefore, on that ground alone, the application should be dismissed. It is further pointed out that no particulars of the poor farmers have been given in the petition and it is also not been stated that what legal injury has been caused to any determinate class or group of persons or whom the petitioners seek remedy.

38. In case of Gopal Chandra Das, the petitioner being the owner of several plots of land challenging notification u/s 4 and declaration u/s 6 of the said Act since the petitioner did not file any objection u/s 5A of the said Act, he has estopped at the stage of the declaration u/s 6(1) since u/s 6(3) of the Act, the acquisition for public purpose has become conclusive.

39. It was further stated that Article 48 of the Constitution of India has no manner of application since the land has been validly acquired under the said Act. There is no bar under Article 48 of the Constitution of India for acquiring land for setting up an industry.

40. The Writ Petition No. 5267 of 2007 in respect of plot Nos. 2576 and 2591 of mouza Gopalnagar have not been acquired. Therefore, that writ petition is not maintainable at all and it is further stated that WP No. 5268 (W) of 2007 of Ram

Chandra Koley claiming themselves to be the owner of several plots of land and accordingly, the compensation have wrongly been awarded in favour of others and, therefore, this application is not maintainable since they have also admitted that an award u/s 11 was duly made and furthermore, the petitioner had knowledge from July, 2006 that the land in question were liable to be acquired and they had full knowledge of the notification u/s 4 and the declaration u/s 6 of the said Act.

41. Therefore, at this stage they cannot have any right to be considered and the writ petition should be dismissed.

42. The writ petition W.P. No. 5269 (W) of 2007 of Gour Chandra Koley is not maintainable because the petitioner had knowledge of the said notices since July, 2006. Therefore, they are not entitled to challenge the acquisition after a long delay.

43. It is further stated that the bargadars who have challenged the acquisition process has no right to file the writ petition and have no locus standi to challenge the acquisition. It is further stated that the award has been made in respect of the bargadars in accordance with Section 23 of the said Act as it stands amended. The definition of "Land" in Section 3A of the Act is in conclusive and includes benefit arising out of land. Right to bargas cultivation is not only the benefit arising out of land and hence there is no bar to acquisition.

44. Furthermore, the land in which the petitioners claimed to cultivate as bargadars remains u/s 4 of the Land Reforms Act the land of the raiyat who owns the land. It is the owner of the land who are alone entitled to be served with such notice as it is required to be served under the said Act. Bargadars even not entitled to have a service of the notice. It is further pointed out that the compensation has to be calculated in terms of Section 23 of the Land Acquisition Act as it stands amended. The nature of calculation has been provided by the West Bengal Amendment Section 24A of the said Act by introducing Sub-section (3) by the West Bengal Amendment of Section 24A of the said Act. Therefore, the bargadars have no locus standi to challenge the acquisition.

45. It is further stated that most of the bargadars have received compensation. If the writ petitioners are aggrieved, they may approach the Collector before the money is deposited in the Court.

46. Such acquisition processes have been challenged since according to the said writ petitioner the real objects of the lands for Tata Small Car Project Ltd. without following the procedures of Part VII of the Act. It is further pointed out that the writ petitioners does not challenge the acquisition proceedings in the said writ petition nor any challenge has been thrown against the notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). The further allegation has been made in the said writ petition that the agricultural lands have been acquired or sought to be acquired for setting up a Small Car Project by the Tatas destroying the fertile agricultural land.

47. In the writ petition being W.P. No. 6486 (W) of 2007 (Debabrata Bandopadhyay v. State of West Bengal) the writ petitioners pointed out that the lands in Singur could be acquired only after complying Part VII of the said Act of 1894 following the procedures of the Land Acquisition (Company) Rules, 1963. In the said writ petition the writ petitioner also submitted that the notification u/s 4 of the said Act issued by the authorities are vague and from the notification it does not appear who is the acquiring authority in respect of such acquisition. It is further pointed out that the publication of the notification u/s 4 of the said Act has been made in such manner that no effective objection could have been filed u/s 5A of the said Act.

48. It was further tried to be contended that different notifications issued u/s 4 for the same project was only to mislead the people of the said area and further it is submitted that the public purpose which has been sought to be made out in the notification cannot be treated as public purpose.

49. In W.P. No. 25248 (W) of 2006 (APDR v. State of West Bengal) the writ petitioners have thrown a challenge that whether there was any public purpose/public element was acquired to the land in question under the said Act and the said land for setting up of a project by a non-government company whether the notification issued u/s 4 of the said Act is in colourable exercise of power, illegal and mala fide and in fact are not for public purpose. The challenge has also been thrown by them that whether such acquisition at the public expense in the guise of public purpose is unlawful etc.

50. In W.P. No. 5269 (W) of 2007 (Gour Chandra Koley v. State of West Bengal) the writ petitioners themselves described as the bargadars within the meaning of Section 2 Sub-section (2) of the West Bengal Land Reforms Act, 1955 and submitted that the names of the writ petitioners were recorded u/s 21D of the Act of 1955 read with Section 14I of the West Bengal Land Reforms Rules, 1965.

51. It was also alleged that no notice u/s 9 was served upon them or the award was published thereafter. Hence, the whole process of acquisition is bad in law and in violation of Articles 14 and 300A of the Constitution of India. It was further stated that such process is also in violation of Article 48 of the Constitution of India.

52. It was further alleged that destroying the agricultural fertile land no public purpose could be served upon by setting up a Small Car Project.

53. Hence, it appears that all other writ petitions which have been filed are almost identical and the points involved in those writ petitions are covered in the other writ petitions. Hence, we take up all the writ petitions along with the applications and dispose of those by this common judgment.

54. Mr. S.S. Ray, learned Senior Advocate appearing in support of the application [W.P. No. 6486 (W) of 2007 and W. P. No. 7048 (W) of 2007] and drew our attention to the Preamble of Land Acquisition Act, 1894 (hereinafter referred to

as "the said Act") and submitted that the object of the said Act is for the acquisition of land for public purposes and for companies.

55. He also drew our attention to Sections 4 and 6 of the said Act and submitted that lands tried to be acquired for the purpose of setting up a manufacturing unit for Small Car Project of Tata Motors. Therefore, question is whether the acquisition is for public purpose or for the purpose of giving the land to the Tata Motors?

56. According to Mr. Ray, the acquisition process is bad since the acquisition has been made without following the provisions of Part VII of the said Act. By virtue of the Part VII, the company is to enter into an agreement with the Government showing public utility amongst others.

57. He further drew our attention to the Land Acquisition Companies Rules, 1963 (hereinafter referred to as "the said Rules"), in particular, Rule-4, of the said rules which is reproduced hereunder:

Land Acquisition (Companies) Rules, 1963

4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings.-(1) 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,:

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

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

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

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

(v) that the company is in a position to utilise the land expeditiously; and

(vi) 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.

(2) The Collector shall, after giving the company a reasonable opportunity, to make any representation in this behalf, hold an enquiry into the matters referred to in Sub-rule (1) and while holding such enquiry he shall:

(i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agriculture land;

(ii) determine having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the

land, which in the opinion of the Collector, should be acquired for the company; and

(iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation.-For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under Sub-rule (2), the Collector shall submit a report to the appropriate Government and a copy of the same be forwarded by that Government to the committee.

(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 5A of the Act; and

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

58. The authorities also did not comply the said rule, therefore, the said acquisition is bad in law. According to him, the notice u/s 4 of the said Act was issued without application of mind and there is no specific purpose has been, mentioned in the notice. Therefore, the notice is vague and is bad in law.

59. Mr. Ray further pointed out that the said agricultural land is fertile land and yielding three crops, viz., aman, boro and ayush. By the process of acquisition the said agricultural land will be destroyed permanently and the entire family of cultivators would loose their livelihood.

60. Separate notices were issued u/s 4(1) of the Act on 19th July, 2006 and on different dates only to mislead the people about the total areas of the land so to be acquired by the authorities.

61. He also drew our attention to the said notices and pointed out that in the notice issued u/s 4(1) of the Act, it has been specifically stated that: "Whereas, it appears to the Governor that the land mentioned in Schedule below is likely to be needed to be taken by Government/Government Undertaking/Development authorities at the public expenditure for a public purpose viz., employment generation and socio-economic development of the area by setting up Tata Small Car Project in...."

62. Therefore, from the said notification issued u/s 4(1) of the said Act by the authorities, it is clear that they wanted to set up a Small Car Project of Tata and the public purpose has been mentioned as "employment generation" and "socio-

economic development of the area". According to Mr. Ray, the said notification is without application of mind.

63. Similarly, the declaration u/s 6 of the said Act would show that the authorities did not apply their mind and the said declaration is a vague one since it has not been specifically stated that the land mentioned in the Schedule under the said declaration is needed by the State Government or by the Government Undertaking or by the Development authorities at the public expenses for a public purpose. Therefore, the said declaration cannot give an idea particularly who is the requiring body and Tata's Small Car Project is nothing but a private one.

64. According to Mr. Ray, WBIDC Ltd. were brought in the picture to cure the defect and evade the rules. Furthermore, State tried to make out a case of Automobile Park, which was never mentioned in the notification or in the declaration. Therefore, these acts of authorities would show that the whole procedure is illegal, improper, arbitrary and such action of the authorities also vitiates the entire acquisition proceedings on the ground of fraud. In support of his contentions, he relied upon the decisions reported in M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, ; Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, ; Commissioner of Police, Bombay Vs. Gordhandas Bhanji, ; Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ; Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others, ; C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, ; AIR 1965 SC 130 [State of Madhya Pradesh and Ors. v. Champalal and Ors.]; Dalchand and Others Vs. Delhi Improvement Trust (Now Delhi Development Authority) New Delhi, and Pratibha Nema and Others Vs. State of M.P. and Others, .

65. Mr. Ray further contended that if a statute has directed to do an act in a manner particularly, it is the duty of the authorities to follow the said statute. If an act, which cannot be done directly, it is also cannot be done indirectly and he relied upon the decision of 1824 (2 B & C) 635 (Fox v. Bishop of Chester). He also contended that the public revenue does not include the Public Local Authority Fund and in support of his contention he relied upon the decisions reported in Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, : 1881-85 All E R 127/131 [Dawkins v. Antrobus and Ors.]; 1981 (1) All ER 193 page 202 [Re: Woodhams]; M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, ; 1994 (6) SCC 651 (paragraphs 77, 78, 80, 81, 88, 89) [Tata Cellular v. Union of India]; Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, . He also contended that proper notices were not served for the owners and he relied upon the decisions reported in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, ; Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, and Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, in support of his contention.

66. Mr. Ray further pointed out that there is no distinction between non-agricultural land and agricultural land but there is a restriction under Sections 39, 40, 41B and 42 of the said Act and the said rules. He also pointed out that 1991 Land Manual was changed on 6th June, 2006 abrogating Rule 8 of the old 1991 Land Manual Relying upon a decision reported in B.S. Minhas Vs. Indian Statistical Institute and Others, he submitted that the old Land Manual is very much effective during the said period, therefore, without following the said Manual, the decision of the authorities is nothing but a colourable exercise of power. He further pointed out that on 6th July, 2006, WBIDC Ltd. first came into picture and the Explanation given by the authorities. According to him, there is no pleadings made by the Government nor there is any Explanation given by the authorities. Reliance was placed on the decisions reported in Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others, ; Smt. Somavanti and Others Vs. The State of Punjab and Others, ; Union of India (UOI) and Others Vs. Ashok Kumar and Others, ; State of Gujarat and Another Vs. Sankalchand Khodidas Patel (Dead) by L.Rs., .

67. Mr. Somen Bose, learned Senior Advocate submitted that the authorities proceeded in this matter hastily only to favour to the Tata Motors which is nothing but a mala fide intention. He further pointed out that without producing records the State could not proceed in the matter. He further pointed out that the Collector has no right to sign the said thirteen notifications u/s 4(1) of the said Act and the said Sections 4 and 5A of the said Act are mandatory and, therefore, whether the mode of publication was followed by the authorities in accordance with the provisions has to be gone into, if there is no service then the proceedings will be bad in law and he relied upon the decisions reported in 1962 CWN 788 [Md. Sahadat Ali Gazi and Ors. v. State of West Bengal and Ors.]; 2005 (2) CLT 44 [Rajesh Chandra Ghosh v. State of West Bengal] and Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, .

68. He further pointed, out that if there is a Cabinet decision of the matter then no steps can be taken without following the said decisions. According to him, declaration should be published u/s 6 and then steps to be taken in accordance with Sections 7 and 9 of the said Act and after giving a hearing then the award should be published in accordance with the provisions of the said Act and then the land would vest in the State. If there is any violation in respect of such steps by the authorities the whole acquisition proceedings has to be declared as bad in law.

69. He further pointed out that the new Land Manual which came into operation on 6th June, 2006 and since there is a time-bound programme of 30 days probably, according to him, the requiring body has not been specifically stated in the said notice, issued under Sections 4(1) and 6 of the said Act. But, according to him, it is necessary to point out that who is the requiring Body.

70. Mr. Raju, learned Senior Advocate appearing in support of W.P. No. 28304 (W) of 2007 (Joydeep Mukherjee v. State of West Bengal) in addition to the

points raised by Mr. Roy and Mr. Bose, stated that the said acquisition proceeding is nothing but a colourable exercise of power by the State authorities.

71. He further pointed out that the notification was in violation of Section 19(1) (e) and Article 21 of the Constitution of India. He submitted that 30 days time has to be given but according to him, in the instant case, the award was published on 23rd and 25th September, 2006 and no service was affected u/s 45 of the said Act. He also tried to point out that after the award was passed by the Collector, he became functus officio and the consent was obtained from the persons surreptitiously which vitiates the whole proceedings and he relied upon the decisions reported in 1973 CLJ 595 [Province of Bengal v. Satish Chandra De and Anr.]; Orissa Industrial Infrastructure Development Corporation Vs. Supai Munda and Others, ; State of Karnataka and Another Vs. All India Manufacturers Organization and Others, and Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others, in support of his such contention.

72. Mr. Kalyan Bandopadhyay, learned Senior Advocate appearing in W.P. No. 5269 (W) of 2007 submitted that the Cabinet decision was taken on 31st of May, 2006 and on 7th of July, 2006, a proposal was sent for Tata Motors and after one day, the requiring body asked for the land. From the said fact, it would show that the steps were taken hastily without proper manner.

73. He further pointed out that the survey should have been made before the notice u/s 4 of the said Act is published. Therefore, steps taken by the authorities are bad in law and he relied upon the decisions reported in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, ; The State of Bombay Vs. R.S. Nanji, ; Pratibha Nema and Others Vs. State of M.P. and Others, ; Housing Board of Haryana Vs. Haryana Housing Board Employees Union and others, and AIR 2007 SC 1723 (para 31) [Chandigarh Housing Board v. Devinder Singh and Anr.].

74. He further pointed out that the status of the bargadars can be terminated u/s 17 of the West Bengal Land Reforms Act, in particular Section 21D or 15(2). According to him, the State has no right to invoke the Land Acquisition Act of 1894, since the power is given under the said Special Act, under Schedule IX to the Constitution of India, the acquisition proceedings are bad in law in case of the bargadars.

75. He further drew our attention to Rule 8(2) of the Land Manual and submitted that the duty of the State authorities to act in accordance with the Articles 48 and 48(a) of the Constitution of India and he relied upon the decisions reported in State of Gujarat, etc. Vs. Daya Shamji Bhai, etc., ; 1978(4) SCC 16 [U.P. State Electricity Board and Anr. v. Hari Shankar Jain and Ors.]; P.T. Munichikkanna Reddy and Others Vs. Revamma and Others, ; Regional Manager, S.B.I. Vs. Rakesh Kumar Tewari, and 1967(1) Weekly Law Reporter 685 [Lush (Inspector of Taxes) v. Coles].

76. He further tried to contend that under Article 226 of the Constitution of India

it has been specifically stated on behalf of the public revenue and the consolidated fund that money goes to Government company through the Government cannot be treated as public fund. According to him, no payment was made from the public fund and, hence, the acquisition proceedings are bad in law.

77. He further pointed out that the steps were taken in this matter hastily and relied upon the decisions reported in 2001 (1) SCC 182 [Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors.]; Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others, and B.S. Minhas Vs. Indian Statistical Institute and Others, in support of his such contention.

78. He pointed out that notification dated 6th March, 2006 in respect of the new Land Manual was not notified or published in the Gazette and, according to him, the Clause 8 of the Land Manual of 1998 was mandatory. He also pointed out that the Cabinet has no right to give the land to a particular person.

79. Mr. Bandopadhyay further submitted that W.P. No. 5268 (W) of 2007 and W.P. No. 8162 (W) of 2007 and W.P. No. 25625 (W) of 2007 have been filed by the land owners and with regard to the Writ Petition No. 5267 (W) of 2007 he submitted that he does not want to press the said application. He further submitted that W.P. No. 2386 (W) of 2007 along with six CAN applications possession has been taken without following the norms.

80. Mr. Arunabha Ghosh, learned Advocate appearing in support of W.P. No. 2598 (W) of 2007 submitted that in spite of the application was filed for obtaining information from the authorities by the writ petitioners the authorities did not furnish the information properly and in accordance with the provisions of Right to Information Act.

81. Mr. Ghosh further pointed out that the State authorities did not apply the discretion properly and pointed out that public money for the purpose of charity cannot be used and no money has been spent by the Government for public purpose. According to him, the WBIDC Ltd. is not a Government authority. Therefore, the acquisition proceedings are bad in law.

82. He further pointed out that the Government cannot give a largesse in favour of Tata Motors. The WBIDC Ltd. took a loan of Rs. 20 crores from West Bengal Financial Corporation with interest at the rate of 10 per cent per annum and paid the amount as the acquisition cost and he submitted that it has not been denied by the WBIDC Ltd. by filing an affidavit. He further pointed out that no money has been paid out of the public exchequer. Therefore, the acquisition proceedings are bad in law and he also relied upon the decisions reported in Common Cause, A Registered Society Vs. Union of India (UOI) and Others, ; Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, and Ram and Shyam Company Vs. State of Haryana and Others, .

83. Mr. Tapas Kumar Mukherjee, learned Advocate appearing for APDR in support

of W.P. No. 25248 (W) of 2007 submitted that even before the Cabinet meeting was held on 31st of May, 2006, the Tata Motors published the press release on 18th May, 2006 stating that they are going to set up a Small Car Project. He further pointed out that the new Land Manual which came into effect on 6th of June, 2006. The requiring body has to apply and, thereafter, the survey has to be done before the notice was issued u/s 4 of the said Act and, thereafter, objection should be filed in accordance with Section 5A of the said Act. He further pointed out that the Manual itself is contrary to Sections 5A and 6 of the said Act. According to him, when the Manual gave 30 days to complete the whole proceedings whereas in the statute, time has been granted 30 days to file such objection u/s 5A from the date of the issuance of the notice and, therefore, the said new Land Manual de hors the statute.

84. On the contrary, Mr. Balai Chandra Ray, the learned Advocate General appearing on, behalf of the State submitted that out of the six petitions, 5 petitions have been filed by the adversary authorities and furthermore, such applications have been filed after taking over possession and the property has already been vested with the said authority. Therefore, the writ petitions filed are not maintainable.

85. He further submitted that the third party interest has been already created. Therefore, the writ petition is also not maintainable after vesting of land. In support of such contention he relied upon the decisions reported in State of Rajasthan and Others Vs. D.R. Laxmi and Others, and, in particular, drew our attention to paragraphs 3, 6 and 8 of the said decision. He further submitted that the W.P. No. 28304 (W) of 2006 has been filed only on 21st December, 2006 in the guise of Public Interest Litigation and the writ petitioner while describing himself as a social activist and representing poor farmers is not in fact an agriculturist at all. On facts, he pointed out that 10,021 farmers who are really affected by the said acquisition have already received their award money. Therefore, for whom the writ petitioners by way of Public Interest Litigation, espousing the cause of the so-called farmers.

86. Therefore, according to him, these applications are not maintainable under the jurisdiction of Public Interest Litigation in respect of the application filed by one Basudeb Das who has already accepted the fact that the declaration has been issued u/s 6 of the said Act and since he has a private interest his application is also not maintainable under Public Interest Litigation. In support of such contention, Mr. Advocate General relied upon the decision reported in S.P. Gupta Vs. President of India and Others, ; Janata Dal Vs. H.S. Chowdhary and Others, ; BALCO Employees Union (Regd.) Vs. Union of India and Others, and Kushum Lata Vs. Union of India (UOI) and Others, respectively.

87. He further pointed out that so far as the applications filed on behalf of the bargadars, he submitted that if a bargadar has a right, he can file his application before other forum but not by way of Public Interest Litigation and relied upon the decisions reported in Dattaraj Nathuji Thaware Vs. State of Maharashtra and

Others, and M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, respectively in support of his contention.

88. Relying on a decision reported in State of Punjab and Another Vs. Gurdial Singh and Others, , Mr. Advocate General submitted that once possession has been taken, no other remedy is available even if all the notices are bad in law. All the writ petitioners alleged that it is not for a public purpose but for a company and further, if it is for a public purpose, the payment has to be made out of the public revenue. According to him, if a declaration u/s 6 of the said Act is made, then it is nothing but a conclusive proof after the issuance of notice u/s 6(3) of the said Act that it is for public purpose.

89. The Court usually will not upset the executive decision except if it is found that there is a colourable exercise of power then the Court has power to set aside the acquisition process. According to him, this acquisition is for public purpose which would be evident from the notice issued u/s 4(1) and the declaration u/s 6 of the said Act. It may happen that there may be a mistake in respect of the scoring out the names and that defect is nothing but a ministerial defect. But the Court will only find out whether such defect can be treated as a failure on the part of the State to give the effective chance to file objection by the objectors u/s 5A of the said Act.

90. He further pointed out that there are no particulars have been given with regard to the colourable exercise of power or for the mala fide intention on the part of the State authorities and there is no specific averment has been made in the writ petition to that effect. There are no particulars also been given in the pleadings by the petitioners with regard to the fraud as alleged by them and he drew our attention to the said notification u/s 4 as well as the declaration u/s 6 of the said Act and submitted that the said notice is not a vague one since it has been specifically stated for which purpose, the land is to be acquired and further the public purpose has also been mentioned therein. Therefore, he submitted that the said notice cannot be stated to be a vague one and he placed reliance upon the decisions reported in Smt. Somavanti and Others Vs. The State of Punjab and Others, ; Babu Barkya Thakur Vs. The State of Bombay and Others, and Pratibha Nema and Others Vs. State of M.P. and Others, in support of his contention respectively.

91. He further pointed out that the requiring body WBIDC Ltd. sent a proposal and steps were taken accordingly to acquire the land after completion of all the formalities in accordance with the provisions of law and he added that the Collector sent the proposal to the Land Department and the Land Department duly approved the same and the steps were taken accordingly. Hence, according to him, it cannot be stated to be a colourable exercise of power. In support of his contention reliance was placed on the decisions reported in K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, ; M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, and Ashok Kumar alias Golu Vs. Union of India and others, .

92. None of the writ petitioners has been able to show the reasons for declaring the notice u/s 4(1) as vague. The notice is very specific and the public purpose has been stated clearly. He pointed out that the decision reported in Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, has no application in the instant case.

93. The object and purpose of Section 4 of the said Act is to investigate about the acquisition proceedings and further about the land in question which would be evident from a decision reported in Babu Barkya Thakur Vs. The State of Bombay and Others, . A declaration u/s 6 is needed for public purpose and Section 17 of the said Act including the State amendment if imposed then objector loses his right and reliance was placed upon the decisions of Aflatoon and Others Vs. Lt. Governor of Delhi and Others, ; Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, and State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc., in this regard.

94. He submitted that the inadvertent acts on the part of the officer cannot vitiate the proceedings and reliance was placed upon the decision reported in State of Gujarat and Another Vs. Sankalchand Khodidas Patel (Dead) by L.Rs., in this context. The project is based on a policy decision and the State has to take steps to implement the said project.

95. He further tried to contend that the payment was made out of the WBIDC Ltd. fund, the fund of the WBIDC Ltd.- is nothing but the fund of the State authorities. Therefore, the payment from such fund is a payment from the public fund and he relied upon the decisions of 1951(2) All ER 587 at 599 [East End Dwellings Co. Ltd. v. Finsbury Borough Council]; Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, ; JT 2004(1) 284 [John Martin v. State of West Bengal] and Kashi Vidyapith Vs. Motilal and others, in support of such contention.

96. He further submitted that the argument put forward by Mr. Bandopadhyay that u/s 17 of the said Act, termination of cultivation by the bargadars has to be done in accordance with the provisions of law, no objection has been filed by the said bargadars and furthermore, there cannot be absolute bar u/s 17 of the said Act and he drew our attention to the definition stated in Section 2(2) of the said Act in this regard.

97. He further submitted that acquisition process has to be made following the Sections 4, 5A, 6 of the said Act. Thereafter, Sections 7 and 8 of the said Act will come to play its role and then notice u/s 9 of the said Act has to be served on the interested persons. According to him, if the provisions of Section 9(3) is violated, it cannot vitiate the whole proceedings and reliance was placed upon the decisions reported in State of Punjab Vs. Gurdial Singh and Another, ; Bhola Shanker Vs. The Distt. Land Acquisition Officer, Aligarh and Others, ; State of Tamil Nadu and another Vs. Mahalakshmi Ammal and others, ; AIR 1996 Delhi 206 (paras 132 and 133) [Roshanara Begum v. Union of India]; 76 CLJ 430

[Shebait of Sri Sri Brindaban Jiu Thakur v. Raja Nripendra Narayan Chandradhvarjee and Ors.] and P.K. Shaikh Vs. State of West Bengal and Others, , it was further submitted that the award should be published u/s 11 of the said Act. According to him, two awards cannot be made once u/s 11(1) and thereafter, u/s 11(2) of the said Act and he relied on a decision reported in Orissa Industrial Infrastructure Development Corporation Vs. Supai Munda and Others, in this regard.

98. Mr. Advocate General further pointed out that if any person received a compensation without any objection then he cannot have a right to challenge the acquisition proceedings before this Court but if it is accepted under protest, then he can ask for further reference before the appropriate forum and he relied on the decision reported in State of Gujarat, etc. Vs. Daya Shamji Bhai, etc., in support of such contention.

99. Mr. Advocate General also submitted that the notice was issued on 8th August, 2006 and 15 plots of land which were left out although those were included and shown in the map and the corrigendum was published on 30th August, 2006.

100. Therefore, it cannot be said that the owners of all the plots of land did not receive any notice. He further pointed out that the corrigendum of 15 plots relates back to the date of original notification. Hence, according to him, it cannot be said that the notice is bad in law. Out of the said 15 plots of land, 11 awardees have already received the payment and no objection has been filed u/s 5A of the said Act, out of those 15 plots of land only 4 landowners filed their objections before the appropriate forum, that too in respect of the award.

101. Therefore, it is submitted that there was no intention of the State to by pass the said provisions of law, it is nothing but mere mistake. The question which was raised that those who have not filed their objections u/s 5A of the said Act, can their right be brought before the Court by Public Interest Litigation. If no objection has been filed by any of the land owners after such notices were issued by the State authorities for remedies, the breach of fundamental right of a person is nothing but a right under the particular statute and not taking any steps they cannot turn around or can take any advantage by way of Public Interest Litigation. If the said legal right has already been waived by the land-owners, Public Interest Litigation cannot be a remedy and he relied upon the decisions reported in Delhi Administration Vs. Gurdip Singh Uban and Others etc., Delhi Administration Vs. Gurdip Singh Uban and Others, and Abhey Ram (dead) by LRs. and others Vs. Union of India and others, respectively.

102. He further pointed out that there is some distinction between colourable exercise of power and mala fide intention which can be defined through the judgments reported in S. Pratap Singh Vs. The State of Punjab, ; S. Pratap Singh Vs. The State of Punjab, ; E.P. Royappa Vs. State of Tamil Nadu and Another, ; Smt. Ratni Devi and Another Vs. Chief Commissioner, Delhi and Others, ; Medley

Minerals India Ltd. Vs. State of Orissa and Others, ; 1995 Supp (4) SCC 89 (para 21) [J.N. Banavalikar v. Municipal Corporation of Delhi] and State of M.P. and Others Vs. Nandlal Jaiswal and Others, respectively.

103. Mr. Advocate General further submitted that the burden of proof lies on the person who alleges or makes an allegation against a person and he drew our attention to the petition filed by Mr. Joydeep Mukherjee (in paragraph 37) and submitted that there is no allegation has been made by him in respect of mala fide or colourable exercise of power and pointed out that the Hon''ble Supreme Court held that the allegation of mala fide must be taken on facts of the case and it must be specific, the Court can draw inference and he relied upon the decision reported in State of M.P. and Others Vs. Nandlal Jaiswal and Others, in support of his argument. He further pointed out that the Hon''ble Supreme Court also held in Jage Ram and Others Vs. State of Haryana and Others, that though the acquisition is for the company even then it may be treated as public purpose.

104. Hence, Mr. Advocate General submitted all the writ petitions should be dismissed.

105. Mr. Anindya Mitra, learned Senior Advocate appearing on behalf of the Collector submitted that the proposal was given by WBIDC Ltd. and the notices were issued by the Collector. There were 13 notices, area involves 1013.34 acres of land and it has been alleged that the notices were issued only to mislead the land-owners.

106. According to him, it is not practical that for five mouzas, one notice will be issued. It is also not practicable administratively to deal with only one notice.

107. Mr. Mitra further drew our attention to the fact that seven objections were filed after the notification issued u/s 4(1) of the Act. Out of the said seven objectors, all of them received their award money excepting one and no legal proceedings has been initiated by him. The Collector filed the report thereafter, and he further pointed out that the reports were not stereotyped.

108. He further submitted that thirteen Collectors were appointed in respect of the said Land Acquisition cases initiated after the said notification issued u/s 4(1) of the said Act. The powers were given to the said Collectors to decide the matters. Accordingly, thirteen reports were filed by them. He further pointed out that the petitioners i.e., Basudev, Gourchand Koley, Bhuddeswaar Das, Rani Chandra Koley, Debabrata Bandopadhyay and Gopal Chandra Das, they themselves admitted that the notice was served which would be evident from their petition and the said notices were annexed. Therefore, issue of such notification u/s 4 of the said Act was never denied by them and hence, it cannot be said that it is a colourable exercise of power. It is further submitted that the said acquisition process was a camouflage one also cannot be accepted since from the notification and declaration it was made clear that the requiring body needed the land to set up a Tata Small Car Project for socio-economic development and for employment generation. It is true that Rule 4 of the said

Rules to be followed in case of application is made by the company but in this case, WBIDC Ltd. is the requiring body, and for setting up of an industrial unit, which is a public purpose. Therefore, he contended that it cannot be said that it is not for a public purpose. Even, the selection of land has not been challenged in any one of the petitions.

109. Hence, he submitted that the properties have already been vested and the steps have already been taken. The lease has already been executed by WBIDC Ltd. and are being transferred in favour of Tata. Therefore, it cannot be said that it is not for the public purpose, rather it is only for the interest of the public and according to him, the Cabinet took the decision and accordingly the steps were taken by the requiring body.

110. Mr. P. C. Sen, learned Senior Advocate appearing on behalf of the WBIDC Ltd. drew our attention to the Memorandum of Association of the WBIDC Ltd. and submitted the main object of the company to develop industrial areas so that the same may be available to industrial undertakings to establish industries in the State of West Bengal, in particular, he drew our attention to Clause 3 of the memorandum which is set out hereunder:

3. To develop industrial areas as may be selected by the State Government for the purpose and make the same available for industrial undertakings to establish industries in such areas.

111. The company has an object also to advance loans to the companies to be established within the State. Therefore, he submitted that WBIDC Ltd. acted on the basis of the decision of the State and establishing the industrial estates at places selected by the State Government. Therefore, for the growth and development of the industries in the State they leased out the land to the Tata Motors and that too for the development of "socio-economic condition and for employment generation."

112. He further drew our attention to Section 6 of the said Act, in particular, Explanation 2 to Section 6(1) of the said Act and submitted that the compensation money for the said land had been paid out of the funds of WBIDC Ltd., which is owned and controlled by the State, therefore, such compensation shall be deemed to be compensation paid out of public revenue.

113. It was further pointed out by him that as the requiring body, acquisition was put forward by the WBIDC Ltd. and subsequently all steps were taken in accordance with the provisions of law. He further pointed out that the writ petitioners have no locus standi to file the PIL applications. According to him, the right to property given under the Constitution to the citizens and was taken out and subsequently by way of, inserting Article 300A of the Constitution of India, it was provided that no person shall be deprived of his property saved by authority of law, in the instant case, steps were taken to acquire the land in accordance with the provisions of the said Act. According to him, if in terms of Section 3(b) of the said Act of 1894, any person is claiming an interest in the land he has the

right to file an objection against the acquisition but who has no right in the land or has no interest in the land he cannot challenge the acquisition by filing a Public Interest Litigation. The Public Interest Litigation filed by anybody cannot be entertained by the Court and he relied upon the decisions reported in Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, and submitted that they do not have any locus standi to file these writ petitions as PIL. He also submitted that the acquisition has been made for the public purpose and there is no violation of any provision contained in the said Act. Moreover, he adopted the submission of Mr. Advocate General and submitted that the notification u/s 4(1) is absolute clear and there are no particulars given by the petitioners which can establish the case of the petitioners on the ground of fraud, camouflage or can be called to be in exercise of colourable exercise of power the said notification or the declaration issued by the State. Hence, the applications should be dismissed.

114. Mr. S. Pal, learned Senior Advocate appearing on behalf of the Tata Motors and Ratan Tata adopted the arguments put forward by the learned Advocate General on the question of mala fide and he relied upon the decision reported in Narmada Bachao Andolan Vs. Union of India and Others, of Public Interest Litigation matter and a decision reported in Shri Tourang Bam Ibotombi Vs. The Union of India (UOI) and Others, on the allegation of collusion and pointed out that Rule 4(vi) deals with taking over the agricultural land and under Article 31A of the Constitution of India, it has been specifically stated that market price should be paid and the acquisition of agricultural land is not a bar excepting the proper compensation has to be paid. He also handed over the copies of the lease deed which was entered into between WBIDC Ltd. and Tata. -He further submitted that the Public Interest Litigation which is filed by the writ petitioners are not maintainable and should be dismissed.

115. From the facts it appears that the State Government adopted a policy for industrialization to acquire the lands in question scattered within 5 mouzas within the local limits of the Police Station of Singur in the District of Hooghly started acquisition proceedings and several notifications were issued by the State Government u/s 4 of the said Act. One such copy of the said notification is reproduced hereunder:

Government of West Bengal Office of the Land Acquisition Collector & District Magistrate & Collector, Hooghly Notification for Acquisition of Land u/s 4, Land Acquisition Act, 1894

Hooghly No. 273-Learned Advocate/TV-6/ 2006-07 Dated: 20/07/2006.

Whereas, it appears to the Governor that land as mentioned in schedule below is likely to be needed to be taken by Government/Government Undertaking/ Development authorities, at the public expense for a public purpose, viz., employment generation and socio-economic development of the area by setting up TATA Small Car Project in the mouza(s) Beraberi, Jurisdiction List No. 5, P-S. Singur, District Hooghly; it is hereby notified that for the above purpose an area

of land comprising RS/LR plots as detailed below and measuring, more or less, 72.03 acres, as specified below within the aforesaid mouza(s).

This notification is made under the provisions of Section 4 of Act of 1894, inviting all owners of land and persons having interest in the said land to submit their written objection if any, to the acquisition of the land or of any land in the locality, as the case may be, within 30 days from the date of publication of this notification.

It is hereby further notified that for the general benefit of the public, open perusal and for ready reference, the plan drawn on original mouza map of the land to be acquired, and plot-wise ownership details, area of the plot, share of the owner in the plot and current land use of the plot including barga-rights recorded in the plot latest as available with LR Administration have been displayed mouza-wise in the office of the Land Acquisition Collector of the District of Hooghly and other offices namely as offices of DLLRO, BDO & BLLRO, RI, Gram Panchayat and the same shall remain available for inspection by the land owner and any person having interest in the concerned, land during the office hours of all working days for a period of not less than 30 days from the date of publication of this notification.

All land owners and interested parties are requested to approach the office of the concerned BL&LRO for correction, updation, mutation and payment of all arrear dues of land revenue and thereafter submit petition to the Land Acquisition Collector to incorporate such changes on production of "mutation certificates" or corrected version of latest authenticated copy of RORs" and land revenue payment receipts to protect their rights to claim lawfully admissible learned Advocate compensation & due RR benefit.

All land owners and persons interested in the concerned land may apply to avail the benefit of consent awards, submitting their applications Form No. 666-LA-02 to be used by a land owner, Form No. 666-LA-03 to be used by a bargadar and Form No. 666-LA-04 to be used by the DL&LRO. Claims of consent award shall include fair and reasonable compensation for land, anything attached to land and for damages sustained or loss of earnings as per provisions u/s 23 of the LA Act of 1894, enclosing such supporting documents as have been prescribed in the aforesaid forms, seeking most early disposal of their LA compensation and resettlement and rehabilitation claims in terms of their consent award under the provisions of Sub-section (2) of Section 11 of the aforesaid Act. The aforesaid prescribed forms may be collected free of cost from the office of the Land Acquisition Collectors at the district headquarters and its subordinate office units and camp offices, if opened in this connection and such applications may be submitted to such offices of the LA Collectors as will be prescribed by the Collector in his notice board w.e.f. the date of publication of this notification and before expiry of 30 days from the date of publication of the declaration u/s 6 of the aforesaid Act.

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27b	276	277	278	279	280	281		282
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285	286	287	288	289	290	291		292
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295	296	297	298	299	300	301		302
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561	1133	329	330	334	335	336		337
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340	341	342	343	344	345	346		538
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541	542	543	544	545	560	563		123
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1125	1126	1127	1128	1129	1130	1131	1132	1134
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1136	1140	1141	1142	1143	1144	1145	1149	1150
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1199	26	1221	1223	1224	1225	1226	1233	1236
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1288	1289	59	73	93	94	1217	1218	1219
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116. Objections were also called for from persons having interest in the said land to file their written objections.

117. It is further pointed out that the objections were filed earlier even before the publication of such notification u/s 4(1) of the said Act. Admittedly, the notice was served upon those objectors even to appear before the Collector but none appeared at the time of hearing nor even any objection was filed u/s 5A of the said Act. Ultimately, 10,021 farmers received their award money and it also appears that in the original notification 15 plots of land were excluded although it was specifically stated and mentioned in the map so disclosed in the said notification and subsequently a corrigendum was issued on 8th August, 2006 and out of those 15 land owners no objections were filed u/s 5A of the said Act and after publication of the award out of the said 15 land owners, 11 awardees have already received payment and four out of them challenged the award.

118. After issuance of Section 4 notification and after reports were sent by the Collector to the State Government, the State Government after accepting the recommendations by the Collector issued the declaration u/s 6 of the said Act. He further pointed out that acquisition for a company is also for a public purpose.

The allegations of mala fide in fact are devoid of any particulars and the Court does not take cognizance of such own particularised allegations. He further pointed out that Mr. S.S. Ray has submitted that his client had nothing to say against Tatas. Therefore, he submitted that no case has been made out by the petitioners. Hence, the writ petitioners are to be dismissed.

119. Now let us deal with the judgments cited at the Bar in the following.

120. In the decision reported in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, the Court held that the public authorities cannot play fast and loose with powers vested in them, and persons to whose detriment order are made are entitled to know with exactness and precision what they are expected to do or forebear their doing and exactly what authority is making the order.

121. It is further pointed out by the Court that public orders are publicly made in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

122. In the decision reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, the Hon''ble Supreme Court held that the second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

123. In the decision reported in Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others, the Hon''ble Supreme Court held that it is also well-settled that if any decision is taken by a statutory authority at the behest or on the suggestion of a person who has no statutory role to play, the same would be ultra vires.

124. In the decision reported in Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, the Hon''ble Supreme Court held that the said Hindustan Petroleum Corporation Ltd. exercised its option of renewing a lease with effect from 24th April, 1979 and on the expiry of the said period, an eviction proceeding was initiated against the said Hindustan Petroleum by filing a suit for eviction. The said suit was decreed against Hindustan Petroleum and subsequently the appeal was also dismissed which was preferred by the said company. A requisition was sent to the Special Deputy Collector for acquisition of the said land by the Regional Manager of the Hindustan Petroleum Corporation Ltd. for the purpose of continuing the business. Thereafter, a notification was published on 15th October, 1985 which was lapsed and a fresh notification was

then issued on 9th June, 1989 u/s 4(1) of the Land Acquisition Act (hereinafter referred to as "the said Act"). An objection was filed on 20th July, 1989 on the ground that there is no public purpose for acquisition of the said land. After giving an opportunity of hearing, the Collector conducted an enquiry and said to have submitted his report to the company on or about 28th August, 1989. A declaration thereafter was issued u/s 6 of the Act on 25th September, 1989. Questioning such notification a writ petition was filed before the Hon"ble High Court.

125. The learned Single Judge allowed the writ petition subsequently and an appeal was filed on 19th August, 1998 accordingly. The Hon"ble Supreme Court dismissed the said appeal and remitted the matter back to the Hon"ble High Court on the ground that several other contentious issues have been raised. The question arose before the Hon"ble High Court that whether the objection raised by the objectors objecting to the acquisition of land on various grounds have been considered by the authority. The Hon"ble Supreme Court held that Section 5A of the said Act confers a valid right in favour of the person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300A of the Constitution of India, it appears that "in exercise of power of eminent domain may interfere with the right of property of person by acquiring the same but the same must be for a public purpose and the reasonable compensation thereafter must be paid".

126. The Hon"ble Supreme Court further pointed out that the definition of public purpose is of wide amplitude and takes within its sweep the acquisition of land for a corporation owned or controlled by the State as envisaged under Sub-clause (iv) of Clause (f) of Section 3 of the said Act but the same would not mean that the State is the sole Judge therefore and no judicial review shall lie [see 1995 Supp (1) SCC 596, Jilabhai Nanbhai Khachar v. State of Gujarat].

127. The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also to the purpose and in this regard ordinarily, the "jurisdiction of the Court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5A and 6 of the Act must be read conjointly. The Court in a case, where there has been total non-compliance or substantial non-compliance with the provisions of Section 5A of the Act, cannot fold its hands and refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be a conclusive evidence. But when the decision making process itself is in question, the power of judicial review can be exercised by the Court in the event the order impugned suffers from well-known principles viz. illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.

128. However, considerations of the objections by the owner of the land and the acceptance of the recommendations by the Government, it is trite law, must

precede a proper application of mind on the part of the Government. As and when a person aggrieved, questions the decision-making process, the Court in order to satisfy itself as to whether one or more grounds for judicial review exist, may call for the records whereupon such records must be produced. The writ petition was filed in the year 1989. As noticed hereinbefore, the said writ petition was allowed. This Court, however, interfered with the said order of the High Court and remitted the matter back to it upon giving an opportunity to the parties to raise additional pleadings.

129. Furthermore, the State is required to apply its mind not only on the objections filed by the owner of the land but also on the report which is submitted by the Collector upon making other and further enquiries therefore as also the recommendations made by him in that behalf. The State Government may further inquire into the matter, if any case is made out therefor, for arriving as its own satisfaction that it is necessary to deprive a citizen of his right to property. It is in that situation that production of records by the State is necessary.

130. In *Delhi Administration Vs. Gurdip Singh Uban and Others*, whereupon Mr. Ramamoorthy placed strong reliance, the Supreme Court observed that (SCC page 318 para 50):

50. No reasons or other facts need be mentioned in the Section 6 declaration on its face. If the satisfaction is challenged in the Court, the Government can show the record, upon which the Government acted and justify the satisfaction expressed in the Section 6 declaration.

131. The Hon'ble Supreme Court also held in the aforesaid decision that due application of mind on the part of the statutory authority was imperative.

132. In the decision reported in *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*, the Hon'ble Supreme Court held that it is no doubt true that allegations of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation in fact, are made in several of the cases which have come up before this and other Courts and it is found that they have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of it at least might stick. Consequently, it has become the duty of the Court to scrutinize these allegations with care so as to avoid being in any manner influenced by them, in cases where they have no foundation in fact. In this task which is thus cast on the Courts it would conduce to a more satisfactory disposal and consideration of them, if those against whom allegations are made came forward to place before the Court either their denials or their version of the matter, so that the Court may be in a position to judge as to whether the onus that lies upon those who make allegations of mala fides on the part of authorities of the status of those with which this appeal is concerned, have discharged their

burden proving it. In the absence of such affidavits or of materials placed before the Court by these authorities, the Court is left to judge of the veracity of the allegations merely on tests of probability with nothing more substantial by way of answer. This is precisely the situation in which we find ourselves in the present case.

133. In the decision reported in AIR 1965 SC 130 [State of Madhya Pradesh and Ors. v. Champalal and Ors.] the Hon''ble Supreme Court held that the possession was taken over by the State of the immovable property of the owner within the meaning of Article 31(II) the Court also held that the procedure prescribed by Section 7 is mandatory and since admittedly there was no compliance with it no lawful demand could be made for the amount payable by any land holder or by the Central or State Government at the instance of the Central Government without recourse by the machinery provided by Section 7. The notices of the demand were, therefore, properly quashed as illegal.

134. In the decision reported in M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, the Hon''ble Supreme Court held that a repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. [See Associated Provincial Picutre Houses Ltd. v. Wednesbury Corporation 1948(1) KB 223]. In the words of Lord Machgthen in Westminster Corporation v. London and North Western Railway 1905 AC 426, 430:

...it is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first....

135. In The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , this Court states as hereunder (at page 323 of AIR):

...Even if (the statutory order) is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.

136. In State of U.P. and Others Vs. Renusagar Power Co. and Others, , Mukharji, J. as His Lordship then was, stated the following:

The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous such exercise of power will stand vitiated.

137. The Hon"ble Supreme Court observed in the said decision that it is the true position that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it.

138. In the decision reported in 1994 (6) SCC 651, *Tata Cellular v. Union of India*, the Hon"ble Supreme Court held that the principles of judicial review would comply to the exercise of contractual power by governing bodies in order to prevent arbitrariness or favoritism. Judicial review is concerned with reviewing not the merits of decision in support of which the application is made but the Court, would only find out the decision making process. Therefore, the authority of the Court in such case is only with the merits if the decision under appeal and it is true that power of judicial review is not an appeal of the decision and the Court has no right to substitute its own decision. The Court would only find out such process, in case of selection or rejection or arbitrarily, if it is, arbitrary then the Court would interfere in the said matter.

139. The duty of the Court is thus to confine itself to the question of legality. The Hon"ble Supreme Court has specifically stated the grounds upon which an administrative action is subject to control by judicial review can be classified as hereunder:

- a) illegality,
- b) irrationality, viz, *Wednesbury* unreasonableness,
- c) Procedural impropriety.

140. In the decision reported in *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, , the Hon"ble Supreme Court held that the law as settled by this Court is that such a notice under second part of Section 4(1) is mandatory and unless that notice is given in accordance with the provisions contained therein the entire acquisition proceedings are vitiated. We may refer in this connection to *Khub Chand and Others Vs. State of Rajasthan and Others*, . In that case this Court pointed out that the object is to give intimation to a person whose land is sought to be acquired of the intention of the officer to enter the land. u/s 4(2) such a notice is a necessary condition for the exercise of the power of entry. Non-compliance with that condition makes the entry unlawful. In

State of Mysore v. Abdul Razak Sahib 1973(2) SCC 196, no notices as required by Section 4(1) of the Act were published in the locality till after the lapse of about 10 weeks. Section 4 was a valid one. This Court held that in the case of a notification u/s 4 the law has prescribed that in addition to publication of substance of the notification in the concerned locality. Unless both these conditions are satisfied Section 4 of the Act cannot be said to have been complied with. The purpose behind such a notice was that interested persons should know that the land is being acquired so as to prefer any objections u/s 5A which confers a valuable right.

141. It is further pointed out that Section 4 has to be read as an integrated provision which contains two conditions; the first is that the notification in the Official Gazette must be published and the second is that the Collector has to cause public notice of the substance of such notification to be given. These two conditions must be satisfied for the purpose of compliance with the provisions of Section 4(1)).

142. In the decision reported in Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, the Hon"ble Supreme Court held that the Act is an expropriatory legislation. This Court in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, , observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent, [See Khub Chand and Others Vs. State of Rajasthan and Others, and Collector of Central Excise, Ahmedabad Vs. Orient Fabrics Pvt. Ltd., .

143. There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative.

144. In the decision reported in Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, , the Hon"ble Supreme Court held that in Munshi Singh and Others Vs. Union of India (UOI), , that the notification issued u/s 4(1) of the Act had stated the purpose for acquisition as "for planned development of the area". A note was also appended in the notification to the effect that the "plan of the land may be inspected in the office of the Collector, Meerut". This Court, dealing with the requirements of Section 4 in the context of the necessity to state with clarity the "public purpose" in the notification, observed as follows: (SCC page 342, para 6)

It is apparent from Sub-section (2) that the public purpose which has to be stated in Sub-section (1) of Section 4 has to be particularized because unless that is done the various matters which are mentioned in Sub-section (2) cannot be carried out; for instance, the officer concerned or his servants and workmen cannot do any act necessary to ascertain whether it is suitable for the purpose for which it is being acquired. If the public purpose stated in Section 4(1) is planned development of the area without anything more it is extremely difficult to comprehend how all the matters set out in Sub-section (2) can be carried out by the officer specially authorised in this behalf and by his servants and workmen.

145. The Court then went on to say as hereunder: (SCC page 342, para 8)

As already noticed, in the notifications u/s 4 all that was stated was that the land was required for "planned development of the area". There was no indication whatsoever whether the development was to be of residential and building sites or of commercial and industrial plots nor was it possible for anyone interested in the land sought to be acquired to find out what kind of planned development was under contemplation, i.e., whether the land would be acquired and the development made by the Government or whether the owners of properties would be required to develop a particular area in a specified way...

146. This Court finally held that owing to the vagueness and indefiniteness of the "public purpose" stated in the notification u/s 4(1) of the Act, the acquisition proceedings were bad and the entire acquisition proceedings were quashed. *Munshi Singh and Others Vs. Union of India (UOI)*, , was at a much better footing than the instant case, where the only disclosure of the "public purpose" is stated to be "residential".

147. In the decision reported in *Pratibha Nema and Others Vs. State of M.P. and Others*, , the Court observed that Section 6 is subject to Part VII of the said Act. Thus, it reiterates the apparent distinction between acquisition for a public purpose and acquisition for a company. In view of the second proviso and Explanation 2 to Section 6(1), a provision for payment of compensation, wholly or partly, out of public revenues or some fund controlled or managed by a local authority is sine qua non for making a declaration to the effect that a particular land is needed for a public purpose, even if a public purpose is behind the acquisition for a company it shall not be deemed to be an acquisition for a public purpose unless at least part of the compensation is payable out of public revenues which includes the fund of a local authority or the funds of a corporation owned or controlled by the State.

148. These decisions establish that a public purpose is involved in the acquisition of land for setting up an industry in the private sector as it would ultimately benefit the people. However, we would like to add that any and every industry need not necessarily promote public purpose and there could be exceptions which negate the public purpose. But, it must be borne in mind that the satisfaction of the Government as to the existence of public purpose cannot be lightly faulted and it must remain uppermost in the mind of the Court.

149. "Company" is defined to mean by Section 3(e) as: i) a company within the meaning of Section 3 of the Companies Act other than a Government Company, it) a society registered under the Societies Registration Act other than a co-operative society referred to in Clause (cc) and iii) a co-operative society governed by the law relating to the co-operative societies in force in any State other than a co-operative society referred to in Clause (cc). An industrial concern employing not less than 100 workmen and conforming to the other requirements specified in Section 38A is also deemed to be a company for the purposes of Part

VII. In order to acquire land for a company as defined above, the previous consent of the appropriate Government is the first requirement and secondly, the execution of agreement by the company conforming to the requirements of Section 41 is another essential formality. Section 40 enjoins that consent should not be given by the appropriate Government unless it is satisfied that :1) the purpose of the acquisition is to obtain land for erection of dwelling houses for workmen or for the provisions of amenities connected therewith; 2) that the acquisition is needed for construction of some building or work for a company which is engaged or about to engage itself in any industry or work which is for a public purpose; and 3) that the proposed acquisition is for the construction of some work that is likely to be useful to the public. The agreement contemplated by Section 41 is meant to ensure the compliance with these essentialities. It is also meant to ensure that the entire cost of acquisition is borne by and paid to the Government by the company concerned. Thus, it is seen that even in a case of acquisition for a company, public purpose is not eschewed. It follows, therefore, that the existence or non-existence of a public purpose is not a primary distinguishing factor between the acquisition under Part II and acquisition under Part VII. The real point of distinction seems to be the source of funds to cover the cost of acquisition. In other words, the second proviso to Section 6(1) is the main dividing ground for the two types of acquisition. This point has been stressed by this Court in *Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others*, as follows:

In the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition is for a public purpose and that the cost of acquisition should be borne, wholly or in part, out of public funds.

150. The legal position has been neatly and succinctly stated by Wanchoo, J. speaking for the Constitution Bench in *R.L. Arora Vs. State of U.P.*, as follows:

Therefore, though the words "public purpose" in Sections 4 and 6 has the same meaning, they have to be read in the restricted sense in accordance with Section 40 when the acquisition is for a company u/s 6, in one case, the notification u/s 6 will say that the acquisition is for a public purpose, in the other case the notification will say that it is for a company. The proviso to Section 6(1) shows that where the acquisition is for a public purpose, the compensation has to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. Where however, the acquisition is for a company, the compensation would be paid wholly by the company. Though, therefore, this distinction is there where the acquisition is either for a public purpose or for a company, there is not a complete dichotomy between acquisitions for the two purposes and it cannot be maintained that where the acquisition is primarily for a

company it must always be preceded by action under Part VII and compensation must always be paid wholly by the company. A third class of cases is possible where the acquisition may be primarily for a company but it may also be at the same time for a public purpose and the whole or part of compensation may be paid out of public revenues or some fund controlled or managed by a local authority. In such a case though the acquisition may look as if it is primarily for a company it will be covered by that part of Section 6 which lays down that acquisition may be made for a public purpose if the whole part of the compensation is to be paid out of the public revenues or some fund controlled or managed by a local authority. Such was the case in *Pandit Jhandu Lal and Others Vs. The State of Punjab and Others*, , ... it is only where the acquisition is for a company and its cost is to be met entirely by the company itself that the provisions of Part VII apply.

151. 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 a 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.

152. The Court further held that on a deep consideration of the respective contentions in the light of the documents and events relied upon and the settled principles adverted to supra, we have no doubt in our mind that the acquisition was thought of with the earnest objective to achieve industrial growth of the State in public interest. Quite apart from the view taken by this Court that acquisition in order to enable a company in the private sector to set up an industry could promote public purpose, we have enough material in the instant case to conclude that the proposed acquisition will serve larger public purpose. It is fairly clear that the State's goal to bring into existence a huge industrial complex housing a good number of diamond-cutting and polishing units Hon''ble Supreme Court led to the present acquisition. Such industrial complex is compendiously termed as "Diamond Park". The State Government and its agencies including the Nigam acted within the framework of the "Industrial Policy and Action Plan, 1994" in taking the decision to develop a diamond park complex. Para 2.22 of the industrial policy specifically states that "the diamond park will be developed in the State for industries based on diamond-cutting". Mineral based industries have been brought within the scope of "thrust sector". Export-oriented units will be especially encouraged, according to the policy.

153. The policy further states that the Nigam will also work as a nodal agency for the development of large and medium industries in the State and will play the role of a co-ordinator for the development of industrial infrastructure in growth sectors in partnership with the private sector and industrialists associations. The reference to the industrial policy is found in the resolution passed at the meeting of the Nigam on 23.11.1995 and the letter of the General Manager, District Industries Centre while forwarding the proposal for acquisition to the District Collector, Indore. The District Collector while seeking the approval of the Commissioner stressed that prestigious exporters from India as well as other foreign countries were likely to establish their units in the diamond park which would generate a good deal of foreign exchange and create employment potential. The State Government by its communication dated 18.1.1996 accorded sanction in principle for acquiring the private land measuring 73 hectares in Rangwasa village "for industrial purpose" in order to set up a diamond park.

154. Thus, the considerations of the industrial policy and development weighed prominently with all the authorities concerned while processing the proposals. It is clear from the stand taken by the Nigam in the counter-affidavit and the enquiry report of the Land Acquisition Collector that AKI Ltd. and Rosy Blue of Antwerp are not the only entrepreneurs who would get the land in the proposed diamond park area. In the report of the Land Acquisition Officer, it is specifically mentioned that the land is proposed to be allotted to 12 industrial units after being satisfied about their capacity and bona fides. Our attention has been drawn by the learned Advocate General to the layout plan in which 12 plots covering an area of 57 hectares are laid out. The remaining area is earmarked for green belt, housing, common facilities and other amenities.

155. Even the MOU entered into between the Nigam and the two companies does not give us a different picture. It is specifically stated therein that the commerce and Industries Department will hand over the land to the Nigam for the development of diamond park and the Nigam in its turn will allot the land required for setting up the units for cutting and polishing diamonds on leasehold basis to the two companies as well as other companies.

156. The site has been selected by a team of Government officials after visiting various places. The fact that AKI Ltd. also requested for allotment of suitable land near Indore and ultimately the land close to Indore was selected does not necessarily mean that the official team was acting at the dictates of the said company. Having regard to the strategic location and importance of Indore city, the choice of a site near Indore cannot be said to be vitiated by any extraneous considerations. Entering into the MOU with the two companies and thereafter initiating requisite steps for the acquisition of the land does not, in our view, detract from the public purpose character of acquisition. The MOU, in ultimate analysis, is in the mutual interest of both the parties and was only directed towards the end of setting up of an industrial complex under the name of

"diamond park" which benefits the public at large and incidentally benefits the private entrepreneurs. One cannot view the planning process in the abstract and there should be a realistic approach. Industrial projects and industrial development are possible only when there is initiative, co-ordination and participation on the part of both the private entrepreneurs as well as the Governmental agencies. The active role and initiative shown by AKI Ltd., cannot give a different colour to the acquisition which otherwise promotes public purpose. The expression "foreign collaboration" used in some of the letters which the learned Advocate General states is somewhat inappropriate, does not negative the existence of public purpose.

157. The materials placed before us do not lead to the necessary or even reasonable conclusion that the Government machinery identified itself with the private interests of the company, forsaking public interest. Public purpose does not cease to be so merely because the acquisition facilitates the setting up of industry by a private enterprise and benefits it to that extent; nor the existence or otherwise of public purpose be judged by the lead and initiative taken by the entrepreneurs desirous of setting up the industry and the measure of coordination between them and various State agencies. The fact that despite the unwillingness expressed by AKI Ltd. to go ahead with the project, the Government is still interested in acquisition is yet another pointer that the acquisition was motivated by public purpose.

158. In the decision of *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, , the approach of the Court and the crucial consideration to be kept in view in dealing with this question was highlighted by Mathew, J. speaking for the Constitution Bench in the following words (SCC page 290 paras 5 to 6):

According to Section 4, therefore, it is only necessary to state in the notification that the land is needed for a public purposes The wording of Section 5A would make it further clear that all that is necessary to be specified in a notification u/s 4 is that the land is needed for a public purpose. One reason for specification of the particular public purpose in the notification is to enable the person whose land is sought to be acquired to file objection u/s 5A. Unless a person is told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition u/s 5A. We think that the question whether the purpose specified in a notification u/s 4 is sufficient to enable an objection to be filed u/s 5A would depend upon the facts and circumstances of each case.

159. Absence of prejudice was highlighted in para 10 as follows:

10. That apart, the appellants did not contend before the High Court that as the particulars of the public purpose were not specified in the notification issued u/s 4, they were prejudiced in that they could not effectively exercise their right u/s 5A.

160. In the decision reported in *State of Karnataka and Another Vs. All India*

Manufacturers Organization and Others, , the Hon"ble Supreme Court observed that there was considerable time taken by the learned Counsel for the appellants in trying to persuade us that excess land had actually been delivered to Nandi under the FWA. A subsidiary argument was that even though the actual area of land delivered might not have been in excess, since land in prime areas had improperly been acquired for Nandi's benefit, the issue needed to be re-examined. In our view, this argument too is not open to be agitated at this point. As we have already pointed out, the writ petition in Somashekhar Reddy, 1999(1) KLD 500 was the culmination of all such allegations which had been successfully refuted even on the floor of the legislature. Finally, having failed on the floor of the legislature, Public Interest Litigation was filed on the ground that there was something wrong with the FWA and that it was virtually a sell-out to Nandi. The Division Bench of the High Court considered every argument very carefully and recorded findings on all the issues against Mr. J. C. Madhuswamy and others.

161. The Court further held that in our view, permitting the argument on excess land to be heard again to scuttle a project of this magnitude for public benefit would encourage dishonest politically motivated irrigation and permit the judicial process to be abused for political ends. The High Court, therefore, has refused to answer the first part of the second question framed for consideration on the ground that it was already answered in the case of Somashekhar Reddy (supra) and as it was *res judicata*, it could not be re-agitated. Further, that since this argument involved details of contractual disputes; the High Court would not examine it in its writ jurisdiction. We are not satisfied that the High Court was wrong in so holding.

162. The Court also observed that considering the facts as a whole, the High Court came to the conclusion that since the project had been implemented and Nandi had invested a large amount of money and work had been carried out for more than seven years, the State Government could not be permitted to change its stand and to contend that the land allotted for the project was in excess of what was required. Having perused the impugned judgment of the High Court, we are satisfied that there is no need for us to interfere therewith. Thus, there is no merit in this contention, which must consequently fail.

163. It is trite law that when one of the contracting parties is "State" within the meaning of Article 12 of the Constitution, it does not cease to enjoy the character of "State" and, therefore, it is subjected to all the obligations that "State" has under the Constitution. When the State's acts of omission or commission are tainted with extreme arbitrariness and with *mala fides*, it is certainly subject to interference by the Constitutional Courts in this country. The Court referred to Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., , in which a statutory corporation arbitrarily refused to grant the sanction of loans to entrepreneurs who had already acted on the basis of the sanction, and had incurred expenditure and liabilities. The argument that the transaction was

purely a contractual arrangement between the parties and, therefore, not amenable to writ jurisdiction, was categorically rejected by the following observations as reproduced hereunder:

13. Now if appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the Court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Article 226 of the Constitution of India would certainly lie to direct performance of a statutory duty by "other authority" as envisaged by Article 12.

164. The case of *Shrilekha Vidyarthi v. State of U.P.*, is another authority for the proposition that the State Government has to act reasonably and without arbitrariness even with regard to the exercise of its contractual rights. In *Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay*, the situation was one in which a lease between the Bombay Port Trust and certain parties was terminated in exercise of contractual rights and the lease rent was abnormally increased. It was held that there was always an obligation on the part of public authorities in their acts of omission and commission to be reasonable. In *Biman Krishna Bose v. United India Insurance Co. Ltd.*, the question was whether an insurance company could arbitrarily and unreasonably refuse the renewal of a policy. Considering that the insurance company, as a result of State monopoly in the insurance sector had become "State" under Article 12 of the Constitution of India, this Court held as follows:

... it [the insurance company] requires (sic) to satisfy the requirement of reasonableness and fairness while dealing with the customers. Even in an area of contractual relations, the State and its instrumentalities are enjoined with the obligations to act with fairness and in doing so, can take into consideration only the relevant materials. They must not take any irrelevant and extraneous consideration while arriving at a decision. Arbitrariness should not" appear in their actions or decisions.

165. It further appears that in the said decision the Hon"ble Supreme Court has held that the decision of the Hon"ble High Court on ground that larger public interest require the implementation of the project and accordingly, the Hon"ble Supreme Court accepted the view and observation of the Hon"ble High Court where the Hon"ble High Court held as follows:

The Court cannot allow its process to be abused by politicians and others to delay the implementation of a public-project which is in larger public interest nor can the Court allow anyone to gain a political objective. These legislators who have not been successful in achieving their objective on the floor of the Assembly have now chosen this forum to achieve their political objective which cannot be allowed.

166. Hence, the Court held that though there are a number of appellants before us, the contentions raised before the High Court and us were principally as under; first, that no notice was served on the landowners u/s 28(1) of KIAD Act; secondly, that the notice of acquisition was vague and consequently prejudiced any effective objection being raised by the landowners whose lands were sought to be acquired and finally, that the land acquisition was not for a public purpose, or for a purpose as specified in the KIAD Act, and was also in excess of the project's requirement.

167. The next contention is that the notice of acquisition was vague and consequently prejudiced by any effective objection being made by the landowners whose lands were sought to be acquired. The vagueness of the notification, it is contended, has vitiated the notice itself, according to the learned Counsel for some of the landowners.

168. The notification in the instant case states that the lands were being acquired for the purposes of "industrial development" i.e. establishing and developing industrial areas by the KIAD Board. In our opinion, the purpose indicated in the notifications is sufficiently precise and is not affected by the vice of vagueness as alleged. Our attention was drawn to the judgment of this Court in the case of *Aflatoon v. Lt. Governor of Delhi* (supra) where this Court pointed out as follows:

6. ... the question whether the purpose specified in a notification u/s 4 is sufficient to enable an objection to be filed u/s 5A would depend upon the facts and circumstances of each case.

8. ... it the case of an acquisition of a large area of land comprising several plots belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the case of an acquisition of a small area, it might practically difficult to specify the particular public purpose for which each and every item of land comprised in the area is needed.

169. Therefore, it is difficult to accept that the landowners were not aware of the purpose of the acquisition nor can it be accepted that they were unable to file their objections on this ground. As a matter of fact, as the High Court has concurrently found, they did file their objections before the competent authorities. We do not see any prejudice caused to them as a result of the wordings of the notification of acquisition. The authority concerned also heard them on the objections filed after affording them an opportunity to file such objections u/s 28(2) of the KIAD Act. Thus, there is no substance in the contention of the appellants that the notification was vague and hence that the State did not comply with the principles of natural justice.

170. In the decision reported in *Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others*, , *Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group and Ors.*, the Hon"ble Supreme Court held as follows : [SCC page-480, para-63]

While entertaining a Public Interest Litigation of this nature several aspects of public interest being involved, the Court should find out as to how greater public interest should be subserved and for the said purpose a balance should be struck and harmony should be maintained between several interests such as (a) considerations of ecology; (b) interest of workers"(He further contended that) interest of public sector institutions, other financial institutions, priority claimed due to workers; (d) advancement of public interest in general and not only a particular aspect of public interest; (e) interest and rights of owners; (in facts and circumstances of this case) the interest of a sick and closed industry; and (g) schemes framed by BIFR for revival of the company.

171. In the decision reported in 1973 CLJ 595, *Province of Bengal v. Satish Chandra De and Anr.*, the Hon'ble Court held that though the Collector cannot make a supplementary award, I do not think that he is in any way incompetent to enter or to compromise with the claimants who have got a reference u/s 18, Land Acquisition Act, and pay them a sum of money on the basis of such settlement on condition of their withdrawing the reference. Such compromise could certainly be made before the Tribunal, and in my opinion, it does not become illegal by being made out of Court. Section 31(4) of the Land Acquisition Act, though it deals with a different matter, would seem to suggest that the Collector has almost unfettered powers, of entering into contracts with persons interested in the subject-matter of acquisition. In my opinion, therefore, the Tribunal was not right in ignoring Ex- 8 on the ground that it was a nullity in the eye of Law. It was not an award, but it certainly could be used as evidence of the fact, that subsequent to the award, the acquiring authority agreed to pay amicably a sum of money in addition to that given by the award. What value could be attached to such evidence would be for the Court to decide, having regard to the circumstances under which the compromise was arrived at, but it was a piece of evidence admissible in law, which has to be weighed and appraised by the Court.

172. In the decision reported in *Orissa Industrial Infrastructure Development Corporation Vs. Supai Munda and Others*, , the Hon'ble Supreme Court held as follows : [page-308, para-7]

...We have heard learned Counsel for the parties at length. Two main contentions have been raised before us:

(a) reference u/s 18 is not maintainable being barred by limitation; and

(b) when an award is made u/s 11(2) of the Act, no reference can be made u/s 18 of the Act as the same is barred by the proviso to Sub-section (31) of the Act.

173. The Court further held in the said decision that Section 18 of the Act prescribes the procedure for reference to Court and provides that every application for reference shall be made: (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collectors award; and (b) in other cases, within

six weeks of the receipt of the notice from the Collector under Sub-section (2) of Section 12 or within six months from the date of the award, whichever period shall first expire, in the present case Clause (b) is attracted because the first respondent was not present or represented before the Collector at the time he made his award. Therefore, notice under Sub-section (2) of Section 12 was sent to the respondent herein on 27.7.1992. It was returned on 29.7.1992, said to be after proper service. The evidence on record shows that one Supai Gagrai had put his signatures at the bottom of the notice and received the notice. The name of the respondent herein is Supai Munda. The respondent has denied to have received the notice. It is his say that he is an illiterate person and cannot have received the notice u/s 12(2) of the Act personally. If that is so, the notice upon the respondent was not duly served. The contention of the appellants on this ground, therefore, fails.

174. The Court further held in the said decision that pursuant to an order of 4.9.2003, passed by this Court, the State Government filed a translated copy of the award dated 25.7.1992 (shown as 25.8.1992 through inadvertence, which has been subsequently corrected as 25.7.1992). Even otherwise, the fact that award was made on 25.7.1992 is not disputed. The copy of the award dated 25.7.1992 is accompanied by an affidavit dated 12.11.2003 sworn in by Mr. J. K. Das, Advocate on behalf of the appellants in civil appeal arising out of SLP (C) No. 19869 of 1997. The award of 25.7.1992 was clearly passed in a proceeding u/s 11 of the Act. At the time of the hearing, learned Counsel for the State, Mr. J. K. Das, also produced an English version of the award dated 6.8.1992 said to have been passed pursuant to the agreement dated 6.8.1992. The subsequent award dated 6.8.1992 is shown to have been passed u/s 11(2) of the Act. We are surprised to note as to how the subsequent award dated 6.8.1992 was made pursuant to the alleged agreement made on 6.8.1992. We smell a rat. When the award is made by the Collector u/s 11 of the Act, the proceedings before him stand terminated as soon as the award is made. The provision of Sub-section (2) of Section 11 is attracted only at any stage of the proceedings before the Collector, that is to say, if the Collector has not passed the award u/s 11 of the Act and the proceedings before him were still subsisting. In the present case, it clearly appears from the award dated 25.7.1992 itself that it was made u/s 11 of the Act. The claimant Shri Supai Munda (respondent herein) has categorically stated that he received the compensation amount pursuant to the notice u/s 12(2) of the Act, which was issued on 27.7.1992. That statement remains uncontroverted. In our view, therefore, there was no occasion for the learned Collector to have recourse to Sub-section (2) of Section 11 of the Act. There can never be two awards one u/s 11 of the Act and another u/s 11(2) of the Act over the same land acquired.

175. In the decision reported in 2007(1) SCC 641, Daulat Singh Surana and Ors. v. First Land Acquisition Collector and Ors., the Hon'ble Supreme Court held that the public purpose will include a purpose in which the general interest of community as opposed to the interest of an individual is directly or indirectly

involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned.

176. In the Constitution of India, some guidelines can be traced as far as public purpose is concerned in Article 37 of the Constitution. The provisions contained in this part (directive principles of the State policy) shall not be enforceable, by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country. It shall be the duty of the State to apply these principles in making laws.

177. According to Article 39 of the Constitution of India, the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. The laws made for the purpose of securing the Constitutional intention and spirits have to be for public purpose.

178. The term "public purpose"; has been defined in Blacks Law Dictionary (5th Edition) as hereunder:

a public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as for example, a State, the sovereign powers of which are exercised to promote such public purpose or public business.

179. 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.

180. The concept of public purpose was dealt with in great detail in a leading American case *Munn v. Illinois* 94 US 113 : 24 L Ed 77 (1877) and in some other cases. The doctrine declared is that property becomes clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large and from such clothing the right of legislature is deduced to control the use of the property and to determine the compensation which the owner may receive for it. Thus, Field, J. observed as follows:

The declaration of the Constitution of 1870, that private buildings used for private purposes, shall be deeded public institutions, does not make them so. The receipt and storage of grain in a building erected by private means for that purpose does not constitute the building a public warehouse. There is no magic in the language, though used in a Constitutional convention, which can change a private business into a public one, or alter the character of the building in which the business is transacted.

181. In *United Community Services v. Omaha Nat. Bank* 77 NW 2d 576, 585,

162 Neb 786, the Court observed that a public purpose has for its objective the promotion of the public health, safety, morals, security, prosperity, contentment and the general welfare of all the inhabitants.

182. The power of compulsory acquisition is described by the term "eminent domain". This term seems to have been originated in 1525 by Hugo Grotius, who wrote of this power in his work *De Jure Beili et Pacis* as follows:

the property of subjects is under the eminent domain of the State, so that the State or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which, ends those who founded civil society must be supposed to have intended that private ends should give way. But it-is to be added that when this is done the State is bound to make good the loss to those who lose their property.

183. In the said case, the Court observed that the phrase "public purpose" includes a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals is directly and vitally concerned. It is impossible to define precisely the expression "public purpose", in each case all the facts and circumstances will require to be closely examined to determine whether a public purpose has been established.

184. In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, the Court observed that public purpose must include an object in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. Public purpose is bound to change with the times and the prevailing conditions in a given area and, therefore; it would not be a practical proposition even to attempt an extensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose.

185. The Constitution Bench of this Court in the case of *Somavanti (supra)* observed that whether in a particular case the purpose for which land was needed was a public purpose or not was for the Government to be satisfied about and the declaration of the Government would be final subject to one exception, namely, that where there was a colourable exercise of power the declarations would be open to challenge at the instance of the aggrieved party.

186. In the case of *Babu Barkya Thakur v. State of Bombay (supra)*, the Court observed as hereunder:

It will be thus noticed that the expression "public purpose" has been used in its generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited.

187. In *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, , as per Sen, J., the concept of public purpose necessarily implies that it should be a law for the acquisition or requisition of property in the interest of the

general public, and the purpose of such law directly and vitally subserve public interest.

188. 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 the individuals is directly and virtually concerned.

189. The right of eminent domain is the right of the State to reassert either temporarily or permanently its dominion over any piece of land on account of public exigency and for public good.

190. Ambiguity, indefiniteness and vagueness of public purpose are usually the grounds on which notifications u/s 4(1) of the Land Acquisition Act are assailed.

191. Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Public purpose is not static. It also changes with the passage of time, needs and requirements of the community. Broadly speaking, public purpose means the general interest of the community as opposed to the interest of an individual.

192. The power of compulsory acquisition as described by the term "eminent domain" can be exercised only in the interest and for the welfare of the people. The concept of public purpose should include the matters, such as, safety, security, health, welfare and prosperity of the community or public at large.

193. The concept of "eminent domain" is an essential attribute of every State. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual.

194. In the said decision reported in *Ghaio Mall and Sons Vs. The State of Delhi and Others*, , the Hon"ble Supreme Court observed as follows:

The whole object of a writ of certiorari is to bring up the records of the inferior Court or other quasi-judicial body for examination by the superior Courts so that the latter may be satisfied that the inferior Court or the quasi-judicial body has not gone beyond its jurisdiction and exercised its jurisdiction within the limits fixed by the law. Non-production of the records completely defeats the purpose for which such writs are issued, as it did in the present case, before the High Court. We strongly deprecate this attempt on the part of the official respondents to by-pass the Court. We are bound to observe that the facts appearing on the records before us disclosed state of affairs which does not reflect any credit on the administration of the erstwhile State of Delhi. We must, however, say in fairness, the learned Solicitor General promptly produced the entire records before us during the hearing of this appeal.

195. In the decision reported in *State of Punjab and Another Vs. Gurdial Singh and Others*, , the Hon"ble Supreme Court observed as follows:

First, what are the facts? A grain market was the public purpose for which Government wanted land to be acquired perfectly valid. Which land was to be

taken? This power to select is left to the responsible discretion of Government under the Act, subject to Articles 14, 19 and 31 (then). The Court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the executive and judicial circumspection keeps the Court lockjawed save where power has been polluted by oblique ends or is otherwise void on well established grounds. The Constitutional balance cannot be upset.

The question, then is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded" by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated : "I repeat...that all power is a trust that we are accountable for its exercise-that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud, in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the Statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.

196. In the decision reported in 1962 CWN 788, Md. Sahadat Ali Gazi and Ors. v. State of West Bengal and Ors., the Hon"ble Court held that where following the filing of objection through a revenue agent u/s 5A of the Land Acquisition Act to acquisition of certain plots of land, the revenue agent was given information that the matter would be heard on a particular day and the revenue agent was requested to inform the parties about it, this was not sufficient service of notice according to the Land Acquisition Act and the Rules.

197. The service of notice under the Land Acquisition Act and the Rules is a matter of law, and the procedure having been laid down, notice cannot be served in any manner selected by officials and new and novel modes of service cannot be evolved.

198. In the decision reported in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, , the Supreme Court held as follows: [SC page-1966,

para-16]

That there is nothing in Sections 4, 5A and 6 to suggest that Section 4(1) is a kind of reservoir from which the Government may from time to time draw out land and make declarations with respect to it successively. If that was the intention behind Sections 4, 5A and 6 one would have found some indication of it in the language used therein. But on reading these three sections together one can only find that the scheme is that Section 4 specifies the locality, then there may be survey and drawing of maps of the land and the consideration whether the land is adapted for the purpose for which it has to be acquired, followed by objections and making up of its mind by the Government what particular land out of that locality it needs. This is followed by a declaration u/s 6 specifying the particular land needed and that completes the process and the notification u/s 4(1) cannot be further used thereafter. At the stage of Section 4 the land is not particularised but only the locality is mentioned; at the stage of Section 6 the land in the locality is particularised and thereafter it seems that the notification u/s 4(1) having served its purpose exhausts itself. The sequence of events from a notification of the intention to acquire Section 4(1) to the declaration u/s 6 unmistakably leads one to the reasonable conclusion that when once a declaration u/s 6 particularising the area out of the area in the locality specified in the notification u/s 4(1) is issued, the remaining non-particularised area stands automatically released. In effect the scheme of these three sections is that there should be first a notification u/s 4(1) followed by one notification u/s 6 after the Government has made up its mind which land out of the locality it requires.

199. In the decision reported in *The State of Bombay Vs. R.S. Nanji*, , the Supreme Court held as follows: [SC page-1946-para-II]

..."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 Court 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". The cases of *Hamabai*, *Bhanji Munji* and *Ali Gulshan* are merely illustrative.

In each of them primarily the person directly and vitally concerned would be the person to whom the residential accommodation would be allotted with which "prima facie" the general interest of the community would not be directly concerned at all.

200. In the decision reported in *Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others*, , the Supreme Court held as follows : [SC page 1892, para-6]

What is then to be considered is whether the action of the Government can be regarded as colourable being collusive or mala fide. The question whether the acquisition was collusive or mala fide is one of fact and on this point the High Court and the two Courts below have come to the conclusion that the appellants

have not been able to substantiate their pleas. It is not for this Court to review the evidence in a case where there are concurrent findings of fact, unless there be exceptional reasons, and we find none here. It must, therefore, be held that the notifications of the Government issued under Sections 4 and 6 are conclusive on the question that the land was required for a public purpose.

201. In the decision reported in AIR 2007 SC 1723, Chandigarh Housing Board v. Devinder Singh and Anr., the Hon''ble Supreme Court observed that the acquisition of any property through any other source or through any other agency is not prohibited. Right to acquire property is a human right. A deed must be construed reasonably and in its entirety. If acquisition of any property through any agency other than specified therein is not prohibited, evidently, the restriction clause in the condition of eligibility will have no application. Thus, the Court further held that it must be construed strictly. A clause impinging the right of a citizen must receive strict construction and the principle of contextual interpretation will have no application in such a case.

202. In the decision reported in P.T. Munichikkanna Reddy and Others Vs. Revamma and Others, , the Supreme Court held that there is another aspect of the matter, which cannot be lost sight of. The right of property is now considered to be not only a Constitutional or statutory right but also a human right. The Court further held that the human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the judgment of Beaulane Properties Ltd. v. Palmer 2005 (3) WLR 554 : 2005 EWHC 817 (Ch.) and JA Pye (Oxford) Ltd. v. United Kingdom 2005 ECHR 921 : 2005 49 ERG 90, the Court herein tried to read the Human Rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights had widened so much that now property dispute issues are also being raised within the contours of human rights.

203. In the decision reported in Smt. Somavanti and Others Vs. The State of Punjab and Others, , the following contentions were raised:

(1) The acquisition is not for a public purpose either within Section 4 or Section 6 of the Land Acquisition Act or for a purpose useful to the public as contemplated in Section 41 and that the action of the Government amounted to acquiring property from one person and giving it to another.

(2) The alleged contribution of Rs. 100/- made by the Government is a colourable exercise of power, that no such intention was mentioned prior to the notification and that the amount of Rs. 100/- is so unsubstantial a sum compared to the value of the property that it cannot raise an inference of Government participation, in the proposed activity.

(3) That the property is in fact being acquired for a company and, therefore, the provisions of Part VII of the Act should have been complied with. Non-compliance with those provisions vitiates the acquisition.

(4) The petitioners proposed paper mill would be as good an industrial concern as the one intended to be established by respondent 6 and the Government, in preferring the latter to the former, has violated the guarantee of equal protection of law provided by Article 14 of the Constitution.

(5) That the notifications under Sections 4 and 6 could not have been made simultaneously and are, therefore, without efficacy.

204. The Hon'ble Supreme Court further held as follows:

We may deal with the third point raised by Mr. Pathak first, that is, regarding non-compliance of provisions of Part VII. It is common ground that those provisions were not complied with. The reason for that is that according to the respondents the acquisition is not for a company but for a public purpose, partly at public expense. Indeed, the respondents at no stage have relied on the provisions of Part VII of the Act and, therefore, the main question to be considered is whether the acquisition is for a public purpose partly at public expense or not. If it is not so, then, of course, the petitions must succeed. Therefore, it is the first two contentions raised by Mr. Pathak which primarily need our consideration.

205. The Court further held that on behalf of the respondents the learned Advocate-General for Punjab contended that the declaration of the Government in the notification that the land is required for a public purpose is made conclusive by Sub-section (3) of Section 6 of the Act and, therefore, it is not open to this Court to go behind it and try to satisfy itself whether in fact the acquisition is for a public purpose or not. Alternatively, he contended that the land is being acquired for a public purpose because the object of the acquisition is to establish a new industry and do away with imports of refrigeration equipment and to enable technical education to be imparted to Indian personnel in a new field. He further said that the acquisition will not only save foreign exchange by lessening imports but will enable foreign exchange to be earned from the export of goods manufactured in the proposed factory. The new industry is said to be of great economic importance inasmuch as it will enable the preservation of food which will otherwise be destroyed. Refrigeration equipment also contributes towards the maintenance of health because it enables storage of medicines such as antibiotics which are liable to be decomposed, at normal temperatures prevailing in our country. The industry proposed to be started will open a new avenue of employment and diminish unemployment and generally advance the industrial development of the country.

206. Finally, he said that a part of the land is required for building houses and quarters for the workers of the factory and to give amenities to them. All these purposes are, therefore, said to be public purposes. Reliance was placed by him on Vol. 19 of Encyclopaedia Britannica pp. 49-57 for showing the manifold

applications of refrigeration in various industries and activities. Reference was also made to Vol. 18 of Encyclopaedia Britannica, p. 745 wherein facilities for providing refrigeration have been grouped under the heading "public utility". Reference was also made to the next page where it is stated: "Every public utility must be in possession of natural resources upon which that industry is based. Their sites must have strategic locations. Limitation in the choice of this agent of production tends to make the cost of acquiring or leasing these facilities greater than it would be if the industry had a wider range of choice. Furthermore, utilities must make allowances in advance for probable increase in the required capacity. For these reasons utilities are provided with the Governmental power of eminent domain which makes possible the compulsory sale of private property."

207. Relying upon the affidavit of Mr. Bhagat, to which we have referred earlier, the learned Advocate-General of Punjab said that the object of the Government in acquiring these lands is to enable a new industry to be established not only for saving foreign exchange and earning foreign exchange but also for securing the industrial advancement of the country, enabling the citizens to obtain technical education in a new field, relieving to some extent the pressure of unemployment and so on. For all these reasons, he contends that the acquisition must be deemed to be for a, public purpose even though the bulk of the compensation for the acquisition will come from the pockets of respondent No. 6.

208. The Court further held as follows:

16. In our opinion, the question whether any of the aforesaid purposes falls within the expression public purpose would arise for consideration only if the declaration of the Government is not conclusive or if the action of the Government is colourable. If, as contended by the learned Advocate-General, Sub-section (3) of Section 6 concludes the matter and the validity of this provision is not challenged - and the action of the Government is not colourable the other question would not arise for consideration.

209. The Court further pointed out that since the Act provides that the declaration made by the State that a particular land is needed for a public purpose shall be conclusive evidence of the fact that it is so needed the Constitution is not thereby infringed.

210. The Government has to be satisfied about both the elements contained in the expression "needed for a public purpose or a company". Where it is so satisfied, it is entitled to make a declaration. Once such a declaration is made Sub-section (3) invests it with conclusiveness. That conclusiveness is not merely regarding the fact that the Government is satisfied but also with regard to the question that the land is needed for a public purpose or is needed for a company, as the case may be. Then again, the conclusiveness must necessarily attach not merely to the need but also to the question whether the purpose is a public purpose or what is said to be a company is a company. There can be no "need" in the abstract. It must be a need for a "public purpose" or for a company. As we

have already stated the law permits acquisition only when there is a public purpose or when the land is needed for a company for the purposes set out in Section 40 of the Act. Therefore, it would be unreasonable to say that the conclusiveness would attach only to a need and not to the fact that the need is for a public purpose or for a company. No land can be acquired under the Act unless the need is for one or the other purpose and, therefore, it will be futile to give conclusiveness merely to the question of need dissociated from the question of public purpose or the purpose of a company. Upon the plain language of the relevant provisions it is not possible to accept the contention put forward by learned Counsel.

211. The Hon'ble Supreme Court further held that in the decision of Sree Raja Kandregula Srinivasa Jagannadha Rao Pantulu Bahaddur Vs. State of Andhra Pradesh and Another, , a Full Bench of the Madras High Court held that a declaration by the Provincial Government u/s 6(1) of the Act that certain lands were required for a public purpose is final, and, where there is no charge against the Provincial Government that it had acted in fraud of its powers its action in directing the acquisition cannot be challenged in a Court of Law. Similar view has been taken in Samruddin Sheikh v. Sub-Divisional Officer AIR 1954 Assam 81; V. Gopalakrishna Vs. The Secretary, Board of Revenue, Madras and Another, ; Sree Raja Kandregula Srinivasa Jagannadha Rao Pantulu Bahaddur Vs. State of Andhra Pradesh and Another, ; Secretary of State in Council v. Akbar Ali ILR XLV All 443. Several other decisions to the same effect, some of them post-constitution, were also mentioned by the learned Advocate-General, which take the same view as in these decisions. Not a single decision was, however, brought to our notice in which it has been held that the question as to what is a public purpose or whether it exists can be enquired into by the Courts even in the absence of colorable exercise of power, because Section 6(3) has become void under Article 13(2) of the Constitution.

212. The Court also held that if the declaration is vitiated by fraud then the declaration is itself bad and what is bad cannot be protected by Sub-section (3) of Section 6. It is further contended that before the Government could spend any money from the public exchequer for acquiring land a provision has to be made in the budget and the absence of such provision would be a circumstance relevant for consideration. It is sufficient to say that the absence of a provision in the budget in respect of the cost of acquisition, whole or part, cannot affect the validity of the declaration and that if Government does spend money without allotment in the budget, its expenditure may perhaps entitle the Accountant-General to raise an audit objection relied upon the decision reported in may enable the Public Accounts Committee of the State Legislature to criticise the Government. But that is all. Again, where the expenditure is of a small amount like Rs. 100/- it may be possible for the Government to make payment from contingencies and thus avoid objections of this kind. Whatever that may be, these are not circumstances, which would suffice to show that the declaration was colourable.

213. The Court further observed that we would like to add that the view taken in *Senja Naicken* case (supra) 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 public expense" means substantially at public expense. Therefore, on the principle of *stare decisis* the view taken in *Senja Naicken* case (supra) 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 colorable 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.

214. It is further held by the Hon^{ble} Supreme Court that the notification itself sets out the purpose for which the land is being acquired. That purpose, if we may recall, is to set up a factory for the manufacture of refrigeration compressors and ancillary equipment. The importance of this undertaking to a State such as the Punjab which has a surplus of fruit, dairy products etc. the general effect of the establishment of this factory on foreign exchange resources, spread of education, relieving the pressure on unemployment etc. have been set out in the affidavit of the respondent and their substance appears in the earlier part of this judgment. The affidavits have not been controverted and we have, therefore, no hesitation in acting upon them.

215. On the face of it, therefore, bringing into existence a factory of this kind

would be a purpose beneficial to the public even though that is a private venture. As has already been pointed out, facilities for providing refrigeration are regarded in modern times as public utilities. All the greater reason, therefore, that a factory which manufactures essential equipment for establishing public utilities must be regarded as an undertaking carrying out a public purpose. It is well-established in the United States of America that the power of eminent domain can be exercised for establishing a factory for manufacturing equipment upon which a public utility depends. It is, therefore, clear that quite apart from the provisions of Sub-section (3) of Section 6 the notification of the State Government u/s 6 cannot be successfully challenged on the ground that the object of the acquisition is not to carry out a public purpose. We cannot, therefore, accept the petitioner's contention that the action of the Government in making the notification under Sub-section (1) of Section 6 was a colourable exercise of power conferred by the Act.

216. In the decision reported in *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, , the Hon''ble Supreme Court held that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference.

217. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party, does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is circumstances. It is seen that the acquisition has become final and not only possession had already been taken but reference was also sought for the award of the Court u/s 26 enhancing the compensation was also accepted. The order of the Appellate Court had also become final. Under those circumstances, the acquisition proceedings having become final and the compensation determined also having become final, the High Court was highly unjustified in interfering with and in quashing the notification u/s 4(1) and declaration u/s 6.

218. In the said decision it has also been held that the notification did not specify a nature of land which has to be issued u/s 4(1). The object of the publication of

notification u/s 4(1) is that (a) land is needed for a public purpose or is likely to be needed and (b) the offices of the State are authorised to enter upon the lands and measurements etc; (c) the owner/ interested person was put on notice that any encumbrance hereinafter would not bind the State. Therefore, Section 4(1) does not envisage specification of the nature of the land whether it is waste or arable land, when the same was published.

219. In the decision reported in *Senjeevanagar Medical and Health Employees Co-operative Housing Society Vs. Mohd. Abdul Wahab and Others*, , the Hon''ble Supreme Court held that the Parliament enacted Amendment Act 68 of 1984 prescribing the procedural steps in publication of the notification u/s 4(1) and declaration u/s 6 without prescribed time-limit with consequences of non-compliance thereof and in Section 11A declaring that if the steps respectively prescribed therein are not taken, the acquisition entails lapse. In other words, Parliament evinces that neither simultaneous nor immediate local publication of substance is insisted upon. But compliance thereof and publication in two newspapers are required to be done. The object is to put the owner or interested person on notice of acquisition of the land for public purpose. In case of enquiry u/s 5A it should also be done and all the steps should be taken within one year from the last of the dates of the publication of notification u/s 4(1). Otherwise, the acquisition stands lapsed. Even thereafter award should be made within two years from the date of publication of Section 6 declaration. Publication of Section 4(1) notification in the Official Gazette, its substance the locality and also publication of the notification in two-local newspapers in envisaged but no time-limit for their compliance has been prescribed thereunder. If urgency power u/s 17(4) is not invoked, notice u/s 5A is required to be given to the owner and then enquiry is conducted after giving opportunity to the owner or interested person. Thereafter, declaration should be published within one year from last of the dates of the publication u/s 4(1). In other words, from 24.9.84, all the prescribed procedural steps should be taken but without time schedule. The declaration should be published within one year. Maximum outer limit is prescribed. The Central Act 68 of 1984 and Validation Act were enacted under Entry 42 of List III (Concurrent List) of the Seventh Schedule to the Constitution. By operation of proviso to Article 254 of the Constitution, the Amendment Act 68 of 1984 is made operative and it has occupied the same field with effect from 24.9.84. In *Gauri Shankar Gaur v. State of U.P.* this Court surveyed the effect of the Amendment Act vis-a-vis the U.P. *Awas Evam Vikas Parishad Adhiniyam, 1965* and held in paragraphs 39 and 40 that unless both the Acts are inconsistent and cannot operate harmoniously, the State Act prevails over the Central Act but to the extent of repugnancy the State Act becomes void since it is not fully consistent with the provisions of the Amendment Act. In that case, it was held that they were intended to act independently since the State law was enacted under Entries 56 and 66 of List II (State List) while the Amendment Act was enacted under Entry 42 of the Concurrent List.

220. Though it is imperative to lay down clear guidelines and propositions, and

outline the correct parameters for entertaining a Public Interest Litigation particularly on the issue of locus standi yet no hard and fast rules have yet been formulated and no comprehensive guidelines have been evolved. There is also one view that such adumbration is not possible and it would not be expedient to lay down any general rule which would govern all cases under all circumstances.

221. In this context, it would be quite relevant to recite the observations made by Bhagwati, J. (as the Hon'ble Justice then was) in *S.P. Gupta v. Union of India* 1981 (Supp.) SCC 87 at page 210, reading thus:

Today a vast revolution is taking place in the judicial process; the theatre of Law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public-spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose Constitutional or legal rights has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief.

222. Bhagwati, J: in *S.P. Gupta's* case (popularly known as Judges Appointment and Transfer case) which was heard by a Bench of seven learned Judges, has clearly defined what PIL means and is and expressed his views in meticulous detail in the following terms:

It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any Constitutional or legal right or any burden is imposed in contravention of any Constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate directions, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such letter addressed by such individual acting pro bona publico. It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Article 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that the procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore, unhesitatingly, and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of public-minded individual as a writ petition and act upon it... but we must hasten to make it

clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court. We may also point out that as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the Constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid organisation which can take care of such cases.

223. After having elaborately explained the concept of PIL, the learned Judges held that:

... Any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such Constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realization of the Constitutional objectives.

224. However, the learned Judge has sounded a note of caution to the Courts to be observed while entertaining a Public Interest Litigation as follows:

But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.

225. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.

226. In the decision reported in *BALCO Employees Union (Regd.) Vs. Union of India and Others*, , the Hon"ble Supreme Court held that it will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to Court due to some

disadvantage. In those cases also it is the legal rights which are secured by the Courts. We may, however, add that Public Interest Litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a Court of Law, but, a Public Interest Litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the Court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the Court.

227. The decision to disinvest and the implementation thereof is purely an administrative decision relating to the economic policy of the State and challenge to the same at the instance of a busy-body cannot fall within the parameters of PIL.

228. Judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the Government. Here it is not so and in the sphere of economic policy or reform the Court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non-compliance by the State with its Constitutional or statutory duties. None of these contingencies arise in this present case.

229. In the decision reported in *Kushum Lata Vs. Union of India (UOI) and Others*, , the Hon"ble Supreme Court held that in the instant case, the appellant styled the petition as PIL though it related to a tender where she herself claimed to be a tenderer. In another petition, questioning the legality of the auction, she was a party. The High Court was perfectly justified in dismissing the writ petition styled as a PIL. However, the writ petition stated to be pending should be considered in its own perspective in accordance with law.

230. The Hon"ble Supreme Court also held that it is necessary to take note of the meaning of the expression "Public Interest Litigation". In Stroud's Judicial Dictionary, Vol (4th Edition), "public interest is defined thus:

Public interest.-(1) A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected".

231. In Black's Law Dictionary (6th Edition) "public interest" is defined as follows:

Public interest.- Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the

interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government.

232. In the decision reported in Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, , Dattaraj Nathuji Thaware v. State of Maharashtra and Ors., the Hon"ble Court held that in Janata Dal case Janata Dal Vs. H.S. Chowdhary and Others, , this Court considered the scope of Public Interest Litigation. In para 53 of the said judgment, after considering what is public interest, has laid down as follows:

53. The expression "litigation" means a legal action including all proceedings therein, initiated in a Court of Law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression "PIL" means a legal action initiated in a Court of Law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.

233. In S.P. Gupta v. Union of India 1981 (Supp) SCC 87 it was emphatically pointed out by the Court that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody of meddlesome interloper to approach the Court under the guise of a public interest litigant. It has also left the following note of caution:

24. But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.

234. In the decision reported in M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, , the Hon"ble Apex Court held as follows:

It is not enough to allege that a particular rule or any provision has not been complied with. It is a requirement of good pleading to give details, i.e., particulars as to why it is alleged that there is non-compliance with a statutory requirement. Ordinarily, no notice can be taken on such an allegation which is devoid of any particulars. No issue can be raised on a plea the foundation of which is lacking. Even where rule nisi is issued, it is not always for the department to justify its action when the Court finds that a plea has been advanced without any substance, though ordinarily the department may have to place its full cards before the Court.

235. The Court further held that this Court has repeatedly held that writ petition challenging the notifications issued under Sections 4 and 6 of the Act is liable to be dismissed on the ground of delay and laches if challenge is not made within a reasonable time. This Court has said that the petitioner cannot sit on the fence

and allow the State to complete the acquisition proceedings on the basis that notification u/s 4 and the declaration u/s 6 were valid and then to attack the notifications on the grounds which were available to him at the time when these were published as otherwise it would be putting a premium on dilatory tactics. The writ petition (being SCA No. 5149 of 1989) is thus barred by laches as well and the Court further directed to complete the acquisition proceedings in pursuance of the notification issued u/s 4 and the declaration u/s 6 of the Land Acquisition Act.

236. In the decision reported in Babu Barkya Thakur Vs. The State of Bombay and Others, , the question arose that whether Section 4 of the Act is illegal and the land acquisition proceedings are in violation of Articles 14, 19 and 31 of the Constitution and further that the acquisition is not for a public purpose and is mala fide. Thus, the Hon"ble Supreme Court held as follows:

9. From the Preamble as also from the provisions of Sections 5A, 6 and 7 it is obvious that the Act makes a clear distinction between acquisition of land needed for a public purpose and that for a company, as if land needed for a company is not also for a public purpose. The Act has gone further and. has devoted Part VII to acquisition of land for companies and in Sub-section (2) of Section 38, with which Part VII begins, provides that in the case of an acquisition for a company, for the words for such purpose the words for purposes of the company shall be deemed to have been substituted. It has been laid down by Section 39 that the machinery of the Land Acquisition Act, beginning with Section 6 and ending with Section 37, shall not be put into operation unless two conditions precedent are fulfilled, namely, (1) the previous consent of the appropriate Government has been obtained and (2) an agreement in terms of Section 41 has been executed by the company.

237. The Court also held that the facts were not investigated as the Court shall move only when a notification u/s 4 had been issued and the purpose of the acquisition in question was still at the enquiry stage. The main attack on the Constitutionality of the proceedings in question was based upon the notification u/s 4 of the Land Acquisition Act, 1894.

238. It has further been held by the Court that Section 4(1) of the Act had deliberately omitted the words "for a company" and insisted upon a public purpose. The absence from the notification u/s 4 aforesaid of those words, namely, for a public purpose, are fatal to the proceedings. The purpose of the notification u/s 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired. It is only u/s 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a company. What was a mere proposal u/s 4 becomes the subject-matter of a definite proceedings for acquisition under the Act. Hence, it is not correct to say that any defect in the

notification u/s 4 is fatal to the validity of the proceedings, particularly when the acquisition is for a company and the purpose has to be investigated u/s 5A or Section 40 necessarily after the notification u/s 4 of the Act and accordingly the writ petition was dismissed.

239. In the decision reported in *Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others*, , the Hon'ble Supreme Court held that in view of the finding that the manufacturing of the articles was for the benefit of the community and to save substantial part of foreign exchange and staff quarters to workmen it was held that acquisition was for public purpose. Acquisition without resort to Part VII did not constitute a fraud on State's power to acquire land and was not colourable exercise of such powers.

240. In *Indrajit C. Parekh of Ahmedabad and Another Vs. State of Gujarat and Others*, , the Court held that nine proposals were sent by ESI Corporation, a company incorporated under the Indian Companies Act to acquire certain plots of land in Dariyapur-Kazipur area of the city of Ahmedabad bearing certain numbers to establish a dispensary for Employees State Insurance Scheme at Ahmedabad. The Government contributed one rupee to each of the proposals and passed resolution to acquire the private plots of land for the above purpose. After receipt of the report u/s 5A a declaration u/s 6 was published. When they were challenged, the High Court dismissed the writ petition. On appeal, the Court held that the public purpose of the ESI Scheme was not disputed. The only question was whether publication of declaration u/s 6 is a colourable exercise of power by the State Government. In the light of those facts it was held that the exercise of power u/s 6 could not be held to be colourable exercise of power.

241. The Court further held in the decision of *Bai Malimabu and Others Vs. State of Gujarat and Others*, , that for the construction of staff quarters for employees of the dispensary etc. of E S I, after Section 4(1) notification followed by an inquiry u/s 5A and a declaration u/s 6 of the Act were published, the Government contributing Re. 1/- towards the cost of acquisition. This Court negated the contention that contribution of Re. 1/- from the public exchequer for the purpose of acquisition of the land for the use of E S I Corporation was a colourable exercise of power.

242. The Court further held in *Land Acquisition Collector and Another Vs. Durga Pada Mukherjee and Others*, , that the Government published a notification u/s 4(1) of the Act that the lands specified therein were needed for a public purpose, namely, expansion of factory of the company at the expense of the company. When it was objected to another notification was issued that the land was needed for industrial development at public expense contributing token money, it was contended that it was for the private purpose, namely for the benefit of the company. A Single Judge dismissed the writ petition but the Division Bench allowed the appeal holding that there was no evidence produced that the land was needed for public purpose and not for the benefit of the company. On appeal this Court allowed and held that the public purpose was for the industrial

development which was a public purpose and declaration u/s 6 was conclusive. The person impugning on the ground of mala fide or colourable exercise of power must prove affirmatively. Even in the absence of production of documentary evidence by the State, the onus does not shift the burden that it is a mala fide or colourable exercise of power on the part of the State.

243. The Court further held the declaration of acquisition for a company shall not be made unless the compensation to be awarded for the property is to be paid by a company. In the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential conditions for acquisition is for a public purpose and that the cost of acquisition should be borne, wholly or in part, out of public funds. Hence, an acquisition for a company may also be made for the public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds.

244. In the decision reported in Pandit Jhandu Lal and Others Vs. The State of Punjab and Others, , the Court held that the Act contemplates acquisition for a public purpose and for a company thus convening the idea that acquisition for a company is not for a public purpose. It has been held by the Hon"ble Supreme Court that purpose of public utility to in Sections 40 and 42 of the Act which akin to public purpose. Hence, acquisition for a public purpose is also acquisition far a company is governed by considerations of public utility but the procedure for the two kinds of acquisitions is different in so far Part VII has made a substantive provision for acquisitions of land for companies where acquisition is made for a public purpose. The cost of acquisition for payment of compensation has to be made wholly or party public revenues or same fund controlled or managed by a local authority. On the other hand, in the case of acquisition for a company, the compensation has to be paid by the company but in such a case, there is an agreement u/s 41, for the transfer of the land acquired by the Government to the company on payment of the cost of acquisition, as also other matters not material to our present purpose.

245. The agreement contemplated by Section 41 is to be entered into between the company and the appropriate Government only after the latter is satisfied about the purpose of the proposed acquisition, and subject to the condition precedent that the previous consent of the appropriate Government has been given to the acquisition. The "previous consent" itself of the appropriate Government has made to depend upon the satisfaction of that Government that the purpose of the acquisition was as said down in Section 40. It is, thus, clear that the provisions of Sections 39-41 lay down conditions precedent to the application of the machinery of the Land Acquisition Act, if the acquisition is meant for a company. Now, Section 6 itself contains the prohibition to the making of the necessary declaration under that section in these terms:

Provided that no such declaration shall be made unless the compensation to be

awarded for such property has to be paid, by a company or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

246. Section 6 is, in terms, made subject to the provisions of Part VII of the Act. The provisions of Part VII, read with Section 6 of the Act, lead to this result that the declaration for the acquisition for a company shall not be made unless the compensation to be awarded for the property is to be paid by a company. The declaration for the acquisition for a public purpose, similarly, cannot be made unless the compensation, wholly or partly, is to be paid out of public funds. Therefore, in the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But, that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition for a public purpose is that the cost of the acquisition should be borne, wholly or in part, out of public funds. Hence, an acquisition for a company may also be made for a acquisition is met by public funds. If, on the other hand, the acquisition for a company is to be made at the cost entirely of the company itself, such an acquisition comes under the provisions of Part VII. As in the present case, it appears that part at any rate of the revenues; it must be held that the acquisition is not for a company simpliciter. It was not, therefore, necessary to go through the procedure prescribed by Part VII. We, therefore, agree with the conclusion of the High Court, though not for the same reasons.

247. In the decision reported in *Jage Ram and Others Vs. State of Haryana and Others*, , the Court observed that there is no denying of 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 denial of the fact that the industrialization 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 a colourable 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. 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.

248. In the decision reported in *Manubhai Jehtalal Patel and Another Vs. State of Gujarat and Others*, , the Hon''ble Supreme Court held as follows:

...land is indisputably acquired for the benefit of Gujarat State Road Transport Corporation which is a company. Even where land is acquired for a company the State Government has the power to acquire land for a public purpose from the revenue of the State. In other words, this is an acquisition for public purpose with contribution from the State revenue. The State is acquiring land to carry out public purpose with the instrumentality of the Gujarat State Road Transport Corporation. It is not an acquisition for a company with the funds exclusively provided by the company which would attract Part VII of the Land Acquisition Act. In our opinion, the High Court is right in reaching the conclusion that neither Part VII of the Land Acquisition Act nor the Company Acquisition Rules would be attracted....

249. In the decision reported in *R.K. Agarwalla and Others Vs. State of West Bengal and Others*, , the Hon''ble Court observed that the other question which falls to be determined is whether the acquisition proceedings were invalid because the requirements of the Land Acquisition Act were not complied with. There is no doubt that the land of the appellants was to be acquired for the Sangha, and the compensation for acquisition was wholly to be paid out of the funds of the Sangha. Acquisition was therefore, for a company, and had to comply with the requirements of Chapter VII of the Land Acquisition Act. In considering this question, it is necessary in the first instance to read the relevant provisions of the Act, and the amendment which has been made therein by the Land Acquisition (Amendment) Act 31 of 1962 with retrospective operation. The Sangha is a company within the meaning of the Land Acquisition Act. Section 3(e) of the Land Acquisition Act defines "company" as meaning a company registered under the Indian Companies Act, 1882, and includes a society registered under the Societies Registration Act, 1960 and a registered society within the meaning of the Co-operative Societies Act, 1912, under the Land Acquisition Act the appropriate Government is authorized by Section 4 to notify that land is likely to be needed for a public purpose. As observed in *Babu Barkya Thakur case* (supra) "the expression "public purpose" (in the Land Acquisition Act) has been used in a generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited."

250. Therefore, when the proposed acquisition is intended to serve a public purpose in its generic sense, the fact that the acquisition is primarily for a company will not affect the validity of its acquisition. A person interested in any land notified u/s 4(1) may object to the acquisition of the land. The objector is given an opportunity u/s 5A(2) to be heard and thereafter the Collector makes a recommendation whether the land should be acquired. After considering the report the appropriate Government may, subject to the provisions of Chapter VII, if it is satisfied after considering the report, if any, made u/s 5A, that any particular land is needed for a public purpose or for a company, make a declaration to that effect and upon publication the declaration is conclusive evidence that the land is needed for the public purpose or for the company, as the case may be. Whereas u/s 4 of the Act notification may be issued for land

being needed for a public purpose, which would include certain purposes referred to in Section 40(1), the declaration of acquisition u/s 6 must specify whether it is for a public purpose or for a company, and it is this declaration which is declared to be conclusive by Section 6(3).

251. In the decision reported in *Bajirao T. Kote (Dead) by Lrs. and Another Vs. State of Maharashtra and Others*, , the Court observed that it cannot be gainsaid that providing access to the temples is not a public purpose. The exercise of the power u/s 4(1) of the Act, therefore, is neither colourable nor mala fide. It is true that this Court in *Tata Cellular case* (supra), by a Bench of three-Judges, considering the scope of judicial review of the administrative action (grant of licence by tenders) held that the administrative actions of the State or its instrumentalities are amenable to judicial review. As mentioned earlier when the State Governments have exercised the power u/s 4(1) for a public purpose and the public purpose was mentioned therein, the exercise of the power cannot be invalidated on grounds of mala fides or colourable exercise of power so long as the public purpose is shown and the land is needed or is likely to be needed and the purpose subsists at the time of exercise of the power. It is primarily for the State Government to decide whether there exists public purpose or not, and it is not for this Court or the High Courts to evaluate the evidence and come to its own conclusion whether or not there is public purpose unless it comes to the conclusion that it is a mala fide or colorable exercise of power. In other words, the exercise of power serves no public purpose or it serves a private purpose.

252. In the decision reported in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, , the Hon''ble Supreme Court observed that it may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motives does not arise at all. Whether a statute is Constitutional or not is thus always a question of power. A distinction, however, exists between a legislature which is legally omnipotent like the British Parliament and the laws promulgated by it which could not be challenged on the ground of incompetence, and a legislature which enjoys only a limited or a qualified jurisdiction. If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it transgressed the limits of its Constitutional powers. Such transgression may be patent manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements. The idea conveyed by the

expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. As was said by Duff, J. in *Attorney General for Ontario v. Reciprocal Insurers*:

Where the law making authority is of a limited or qualified character it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what is that the legislature is really doing.

253. In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the Constitutional prohibitions by employing an indirect method. In cases like these, the enquiry must always be as to the true nature and character of the challenged legislation and it is the result of such investigation and not the form alone that will determine as to whether or not it relates to a subject which is within the power of the legislative authority. For the purpose of this investigation the Court could certainly examine the effect of the legislation and take into consideration its object, purpose or design. But these are only relevant for the purpose of ascertaining the true character and substance of the enactment and the class of subject of legislation to which it really belongs and not for finding out the motives which induced the legislature to exercise its powers. It is said by Lefroy in his well known work on Canadian Constitution that even if the legislature avows on the face of an Act that it intends thereby to legislate in reference to a subject over which it has no jurisdiction; yet if the enacting clauses of the Act bring the legislation within its powers, the Act cannot be considered ultra vires.

254. In the decision reported in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, , the Hon'ble Supreme Court held that the Constitution (4th) Amendment Act, 1955, amended Clause (2) of Article 31 and inserted Clause (2A) in that Article. The amendments, insofar as they are relevant to the present purpose, substitute in place of the words "taken possession of or acquired" the words "compulsorily acquired or requisitioned" and provide an explanation of the words "acquired and requisitioned" in Clause (2A). The result is that unless the law depriving any person of his property provides for the transfer of the ownership or right to the possession of any property to the State, the law does not relate to "acquisition or requisition" of property and, therefore, the limitations placed upon the legislature under Clause (2) will not apply to such law. While realizing this legal position brought about by amendment to the Constitution, the learned Counsel contends that the right to do business is property as held in *Saghir Ahmad's* case and that Chapter IVA of the Act in effect transfers ownership of that business to the Corporation, owned or controlled by the State, though not directly but by the

dual process of preventing the citizen from doing the business and enabling the Corporation to do the same business in his place and that result is effected by a device with a view to avoid payment of compensation for the entire business so transferred. The colourable nature of the legislation, the argument proceeds, lies in its device or contrivance to evade limitations imposed under Article 31(2).

255. It was also contended in that case that the Orissa Estates Abolition Act, 1952, was a colourable legislation and as such void. Adverting to that argument, Mukherjee, J. said at p. 10 as follows:

It may be made clear at the outset that the doctrine colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all whether a statute is Constitutional or not is this always a question of power:.. . if the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights; questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it transgressed the limits of its Constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression colourable legislation has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits in its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears on proper examination, to be a mere pretence or disguise. As was said by Duff, J. in *Attorney-General for Ontario v. Reciprocal Insurers* and Ors. 1924 AC 328 at p. 337), is reproduced hereunder:

Where the law making authority is of a limited or qualified character it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what is that the legislature is really doing.

In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the Constitutional prohibitions by employing an indirect method.

256. The Court also quoted the observations in extenso as they neatly summarise the law on the subject. The legal position may be briefly stated thus: the legislature can only make laws within its legislative competence. Its

legislative field may be circumscribed by specific legislative entries or limited by fundamental rights created by the Constitution. The legislature cannot overstep the field of its competency, directly or indirectly. The Court will scrutinize the law to ascertain whether the legislature by device purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. If, in fact, it has power to make the law, its motives in making the law are irrelevant.

257. In the decision reported in *Ashok Kumar alias Golu Vs. Union of India and others*, the Hon"ble Supreme Court held that in *Sonapur Tea Co., Ltd. Vs. Must. Mazirunnessa*, , it was reiterated relying on *Gajapati* case (supra) that the doctrine of colourable legislation really postulates that legislation attempts to do indirectly what it cannot do directly.

258. In the decision reported in *E.P. Royappa Vs. State of Tamil Nadu and Another*, , the Court held that we may now turn to the ground of challenge based on mala fide exercise of power. The petitioner set out in the petition various incidents in the course of administration where he crossed the path of the second respondent and incurred his wrath fry inconvenient and uncompromising acts and nothings and contended that the second respondent, therefore, nursed hostility and malus animus against the petitioner and it was for this reason and not on account of exigencies of administration that the petitioner was transferred from the post of Chief Secretary. The incidents referred to by the petitioner if true, constituted gross acts of maladministration and the charge levelled against the second respondent was that because the petitioner in the course of his duties obstructed and thwarted the second respondent in these acts of maladministration, that the second respondent was annoyed with him and it was with a view to putting him out of the way and at the same time deflating him that the second respondent transferred him from the post of Chief Secretary. The transfer of the petitioner was, therefore, in mala fide exercise of power and accordingly invalid.

259. In the decision reported in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, , the Hon"ble Supreme Court held as follows:

...it is true that in the writ petitions the petitioners used words such as "mala fide", "corruption", and "corrupt practice" but the use of such words is not enough. What is necessary is to give full particulars of such allegations and to set out the material facts specifying the particular person against whom such allegations are made so that he may have an opportunity of controverting such allegations. The requirement of law is not satisfied insofar as the pleadings in the present case are concerned and in the absence of necessary particulars and material facts, we fail to see how the learned Judge could come to a finding that the State Government was guilty of factual mala fides, corruption and underhand dealing...

260. In the decision reported in *Medley Minerals India Ltd. Vs. State of Orissa*

and Others, , Medley Minerals India Ltd. v. State of Orissa and Ors., the Hon''ble Supreme Court held that it is trite law that plea of mala fides has to be specific, and demonstrable. Not only this but the person against whom the mala fides are alleged must be made on a party to the proceedings and a reasonable opportunity should be granted for hearing without taking such steps the argument of mala fide must fail.

261. In the decision reported in 1991 Supp (2) SCC 587, Jindal Industries Ltd. v. State of Haryana and Anr., the Hon''ble Court held that the mala fides are essential questions of fact and they have not only to be alleged but have also to be supported by the relevant materials. Without the materials, the point cannot be permitted to be taken up.

262. In the decision reported in State of Gujarat and Another Vs. Sankalchand Khodidas Patel (Dead) by L.Rs., , the Hon''ble Supreme Court held in the said decision that the High Court has gone on to state that as the words "or at the expense of a local body or corporation or company as the case may be" were not scored off from the notification u/s 6 of the Act, the language of the notification supported its finding that the acquisition was for a company, and not for a public purpose. It is true that the unnecessary words were not scored off, but the very fact that it was stated at as many as four places in that very notification that the acquisition was for a public purpose, was sufficient to show that the omission was inadvertent and could not justify the finding that the land was not acquired for a public purpose but for a company.

263. In the decision reported in Pt. Lila Ram Vs. The Union of India and Others, , the Hon''ble Supreme Court held as follows:

...it is significant that the land covered by the notification is not a small plot but a huge area covering thousands of acres. In such cases it is difficult to insist upon greater precision for specifying the public purpose because it is quite possible that various plots covered by the notification may have to be utilized for different purposes set out in the interim general plan. No objection was also taken by the appellant before the authorities concerned that the public purpose mentioned in the notification was not specific enough and as such he was not able to file effective objections against the proposed acquisition. In the case of Munshi Singh and Others Vs. Union of India (UOI), , the complaint of the appellant was that he was unable to object effectively u/s 5A of the Act to the proposed acquisition. The appellant in that case in that context referred to the fact that a scheme of planned development was not made available to him in spite of his application. As against that, as already mentioned, no objection was taken by the appellant that because of alleged vagueness of the public purpose he was not able to file any effective objection u/s 5A of the Act. The case of Munshi Singh (supra), it may also be pointed out, was considered by the Constitution Bench of this Court in the case of Aflatoon (supra) and it was observed that in the case of acquisition of large area of land comprising several plots belonging to different persons, the specification of the purpose can only be

with reference to the acquisition of the whole area. Unlike in the case of acquisition of a small area, it might practically be difficult to specify the particular public purpose for which each and every item of land comprised in the area is needed. This Court in that case upheld the validity of the notification for the acquisition of land for "the planned development of Delhi". In a subsequent unreported case *Ratni Devi v. Chief Commissioner* 1975(2) SCC 467, this Court reiterated after referring to *Aflatoon's* case (supra) that acquisition of land for the planned development of Delhi was for a public purpose.

264. In the decision reported in *State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc.*, , the Hon"ble Supreme Court held as follows:

The next question is whether the public purpose stated in the three notifications concerned is vague. It must be remembered that what is vague is a question of fact to be decided in each case having regard to the facts and circumstances of that case. By saying that the public purpose in the said notifications is vague what the respondents really mean is not that it is not a public purpose but that since the public purpose is expressed in vague terms and is not particularized with sufficient specificity, they are not in a position to make an effective representation against the proposed acquisition.

In the case of *Aflatoon* (supra), the Constitution Bench dealt with the question whether the acquisition of a large extent of land for a public purpose, viz. "the planned development of Delhi" was vague. Mathew, J. speaking for the Constitution Bench, stated as follows: (SCC P. 290. para 5)

According to the section... it is not only necessary to state in the notification that the land is needed for a public purpose.

265. And then added as follows:

The wording of Section 5A would make it further clear that all that is necessary to be specified in a notification u/s 4 is that the land is needed for a public purpose. One reason for specification of the particular public purpose in the notification is to enable the person whose land is sought to be acquired to file objection u/s 3A. Unless a person is told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition u/s 5A.

266. The learned Judge then referred to the ratio of the case *Munshi Singh* (supra) and held as follows: (SCC p. 290. para 6)

We think that the question whether the purpose specified in a notification u/s 4 is sufficient to enable an objection to be filed u/s 5A would depend upon the facts and circumstances of each case.

267. The learned Judge also referred to the decision in *Arnold Rodricks* case and held as follows: (SCC p. 290, para 8)

(I)n the case of an acquisition of a large area of land comprising several plots

belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the case of an acquisition of a small area, it might be practically difficult to specify the particular public purpose for which each and every item of land comprised in the area is needed.

268. The Court further held that in the case of *Pt. Lila Ram v. Union of India* (supra) another Constitution Bench held that the public purpose mentioned in the notification concerned therein, viz., "for the execution of the Interim General Plan for the Greater Delhi" is specific in the circumstances and does not suffer from any vagueness. So far as the decision in *Munshi Singh* case (supra) is concerned, it does contain certain observations supporting the petitioners contentions but it must be remembered that this decision was referred to and explained in the case of *Aflatoon* (supra). In the case of *Aflatoon* (supra), it was stated that whether the public purpose stated in a particular notification is vague or not is a question of fact to be decided in each case and cannot be treated as a question of law. It was also emphasized that where large extents are sought to be acquired for development or similar purposes, it would not be possible to specify how each owner's bit would be utilized and for what purpose. We are of the respectful opinion that the decision in *Munshi Singh* case (supra) should be read subject to the explanation and the holding in *Aflatoon* case (supra) which is a decision of a Constitution Bench. As pointed out hereinbefore, in a subsequent decision in *Lila Ram* (supra), another Constitution Bench has also emphasized the very same aspect. We are, therefore, of the opinion that *Munshi Singh* case (supra) does not come to the rescue of the writ petitioners-respondents in these matters.

269. In the decision reported in 1951(1) All ER 587, *East End Dwellings Co. Ltd. v. Finsbury Borough Council*, the Court held that before 1944 the claimants owned certain property consisting of fifty-five flats which were subject to the Rent Restriction Acts. On June 24, 1944, the flats were completely demolished by enemy action, and a cost of works payment in respect of the damage was determined to be appropriate. The vacant site was compulsory acquired by the local authority, and, as none of the damage had been made good at the date of the notice to treat, which was served on July 28, 1948, the question arose of the amount of compensation payable to the claimants, having regard to the Town and Country Planning Act, 1947, Section 53(1)(a) which provides that in such a case the value of the interest for the purposes of assessment of compensation shall be taken to be the value which it would have if the whole of the damage had been made good before the date of the notice to treat.

270. The Court further held that the "damage" referred to in Section 53(1)(a) of the Act of 1947 could only be the physical damage to the building, and a building which had been completely demolished could only be "made good" if it was re-built, and, therefore, the value to be considered, in determining the compensation payable to the appellants u/s 53(1)(a) was the value which the building would have had if it had been re-built before the date of the notice to treat; had it been re-built before that date, the appellants would have been freed

from the restrictions as to rents which attached to the demolished building; and, therefore, the compensation payable to them was to be assessed on the basis that the rents of the notional building would not be restricted to the amount of the former standard rents.

271. In the decision reported in *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, , the Hon"ble Supreme Court held that the purpose and object of creating a legal fiction in the statute is well known. When a legal fiction is created, it must be given its full effect. In *East End Dwellings case* (supra) Lord Asquith, J. stated the law in the following terms:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

272. The said principle has been reiterated by the Court in *M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another*, . See also *Indian Oil Corporation Ltd. Vs. The Chief Inspector of Factories and Others*, ; *Voltas Ltd. v. Union of India* 1995 Supp(2) SCC 498; *Harish Tandon Vs. Addl. District Magistrate, Allahabad, U.P. and others*, and *G. Viswanathan Vs. The Hon"ble Speaker, Tamil Nadu Legislative Assembly, Madras and another*, .

273. The Court further held that the relevant provisions of the Act are absolutely clear, unambiguous and implicit a plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse.

274. The Court further held that the statutory interdict of use and enjoyment of the property must be strictly construed it is well-settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all The State and other authorities while acting under the said Act are only creature of the statute. They must act within the four corners thereof.

275. In the decision reported in *JT 2004 (1) SC 289, Ashok Leyland Ltd. v. State of Tamilnadu and Anr.*, the Court observed that in interpretation of Section 6A of the Central Act, the Court held that a statute for the purpose of its interpretation must be read in its entirety. It is to be given a purposive construction. Applying

Heydon's rule, it must be held that the amendment was necessitated not only to make the dealer to file such a declaration imperatively but also to see that such movement of goods becomes inter-State sale by raising a legal fiction, as "having been occasioned in course of a inter-State sale. In other words, if such a declaration is filed and on an inquiry made pursuant to or in furtherance of the particulars furnished are found to be correct by the assessing authority, the result thereof which is evidenced by the expression "thereupon" shall in view of the legal fiction created would be a transaction otherwise than as a result of an inter-State sale. Furthermore, once such a legal fiction is drawn, the same would continue to have its effect not only while making an order of assessment in terms of the State Act but also for the purpose of invoking the power of reopening of assessment contained in Section 9(2) of the Central Act as well as Section 16 of the State Act.

276. The Court further observed that in the case of Mahant Dharam Das (supra), it has been held that the object of the Act is to get rid of protracted litigation.

277. A sale may have several elements and all of them need not necessarily take place in one State and in that view of the matter a presumption had to be provided for by a deeming provision as a logical corollary of the principles laid down by a law of Parliament.

278. In the decision reported in Bijender Singh Vs. State of Haryana and Another, , the Court observed that in terms of the 1986 Act, a person who was not juvenile could be tried in any Court. Section 20 of the 2000 Act takes care of such a situation stating that despite the same the trial shall continue in that Court as if that Act has not been passed and the event, he is found to be guilty of commission of an offence, a finding to that effect shall be recorded in the judgment of conviction, if any, but instead of passing any sentence in relation to the juvenile, he would be forwarded to the Juvenile Justice Board (in short "the Board") which shall pass orders in accordance with the provisions of the Act as if it has been satisfied on inquiry that a juvenile has committed the offence. A legal fiction has thus been created in the said provision. A legal proposition as is well known must be given its full effect although it has its notifications. [see Bhavnagar University case (supra) and Ashok Leyland Ltd. case (supra)].

279. The Court further observed that in interpreting a provision creating a legal fiction, the Court has to ascertain for what purpose the fiction is created. [See Levy, Re, ex p Walton, 1881(17) Ch D 746]. After ascertaining the purpose the Court has to assume all those facts and consequences which are incidental or inevitable corollaries for giving effect to the fiction [See East India Dwellings case (supra) and Karam Chand Thapar case (supra). But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the provision by which it is created. [See State of Maharashtra Vs. Laljit Rajshi Shah and Others, : Coal Economising Gas Co. In re, 1875(1) Ch D 182 and Hill v. East and West Dock Co. 1884(9) AC 448.

280. In the decision reported in *Kashi Vidyapith Vs. Motilal and others*, , the Hon''ble Supreme Court held that it is not in dispute that the establishment of university and construction of the buildings including staff quarters, hostels, playground etc. is a public purpose provided if it is done by an authority within the meaning of Section 3(31) of General Clauses Act. The main emphasis of *Shri Chowdhuri* is that unless the authority is one that is analogous to the one like municipality, it would not be a local authority. The State has the control over the local fund held by the municipalities etc. but the funds held or controlled by the university are not under the control of the State Government and that, therefore, unless the procedure prescribed in Chapter VII of the Act is followed, it is not public purpose. We do not find the contention to be acceptable. Hence, it would be clear that the State Government has financial control over the university.

281. The Court further held that it is true that the university is supposed to be autonomous in its management. But the limited question that arises for consideration, is whether the State has control over the funds of the university? As seen from the above provisions, the State has sufficient control over the funds to be expended by the university. Though the expenditure is to be made by the university, the funds come from the contributions made by various authorities. Under those circumstances, it is a local fund.

282. In the decision reported in *State of Punjab Vs. Gurdial Singh and Another*, , the Court held that the answer to the question formulated at the outset is rendered in the negative and it is held that a bona fide, omission to serve a notice envisaged by Section 9(3) of the Act on anyone of the numerous persons interested in claiming compensation cannot vitiate the award of the Collector rendered u/s 12 and the proceedings subsequent thereto.

283. In the decision reported in 1976 CLJ 430, *Shebait of Sri Sri Brindaban Jew Thakur v. Raja Nripendra Narayan Chandradharjee*, the Hon''ble Supreme Court observed that where there is not the slightest ambiguity or doubt as to what land was proposed to be acquired and this was exactly the same land that was acquired, the only error arose from the question whether the boundary line between the two districts lay to the north or the south of the specific and definite land mentioned in the declaration u/s 6 of the Land Acquisition Act and actually acquired, the subsequent proceedings in the acquisition are operative and valid. The failure to issue notice u/s 9 of the Land Acquisition Act does not nullify the subsequent land acquisition proceedings to the extent that Government''s title by acquisition failed.

284. In the decision reported in *Bhola Shanker Vs. The Distt. Land Acquisition Officer, Aligarh and Others*, , the Hon''ble Supreme Court observed that from the counter-affidavit filed in the High Court it was clear that the public notice u/s 9(1) was affixed at prominent places in the locality and the High Court was not inclined to believe that the petitioner remained in ignorance of the land acquisition proceedings.

285. In the decision reported in P.K. Shaikh Vs. State of West Bengal and Others, , the Court held that non-service of the notice on the petitioner even if the petitioner was entitled to any notice u/s 9(3), will only affect the claim of the petitioner with regard to compensation and in the facts and circumstances of the case non-service of the notice, on the petitioner, cannot and does not vitiate the acquisition proceedings and the award.

286. In the decision reported in State of Tamil Nadu and another Vs. Mahalakshmi Ammal and others, , the Hon"ble Supreme Court observed that it is true that the Government having realised that the lands were initially notified to be acquired but did not cover the survey numbers being situated in the adjacent villages; the errata notification was published and included to lands in Surveys Nos. 2/5, 2/11,2/12. Once errata was published, it dates back to the date of initial Section 4(1) notification, namely, 26.6.1978. It cannot be considered to be a fresh notification issued u/s 4(1). It is not in dispute that the respondents, in fact, filed their objections to the notice issued u/s 5A and Rule 3 of the rules made by the State Government. Shri Sivasubramaniam, is unable to place before us the nature of the objections raised by the respondent-petitioners. But the fact remains that the respondents had the opportunity and, in fact, they did particulars in Section 5A enquiry. Therefore, the declaration made u/s 6 does not get vitiated.

287. The Court further held that it is well-settled law that publication of the declaration u/s 6 gives conclusiveness to public purpose. Award was made on 26.9.1986 and for Survey No. 2/11 award was made on 31.8.1990. Possession having already been undertaken on 24.11.1981, it stands vested in the State u/s 16 of the Act free from all encumbrances and thereby the Government acquired absolute title to the land. Award is only an offer on behalf of the State. If compensation was accepted without protest, it binds such party but subject to Section 28A. Possession of the acquired land would be taken only by way of a memorandum, panchnama, which is a legally accepted norm.

288. In the decision reported in AIR 1996 Delhi 206, Roshanara Begum v. Union of India and Ors., the Hon"ble Supreme Court held that it is the date of the signing of the award which amounts to making of the award and communication of the award is not sine qua non for making of the award. The purpose of serving a notice u/s 12 is only to enable the aggrieved interested person to decide whether the compensation given in the award is to be accepted or reference is to be made to the Court concerned for enhancement of the compensation and non-issuance of a notice soon after making of the award does not vitiate the award in any manner which is only an offer of payment of compensation for the land sought to be acquired.

289. In the decision reported in State of Gujarat, etc. Vs. Daya Shamji Bhai, etc., , the Hon"ble Supreme Court held that in view of the above agreement and in view of the discussion made by the Land Acquisition Officer in the award and working details given in the annexures made therein, it is clear that the parties

having contracted to receive compensation the question emerges whether they are entitled to seek a reference. On making an award u/s 11 and issuance of the notice u/s 12 of the Act, the Collector is enjoined u/s 31(1) to tender payment of the compensation awarded by him to the interested persons entitled thereto to receive the compensation according to the terms of the award. Under the second proviso to Sub-section (2) of Section 31 "no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18". The entitlement to make reference to Civil Court u/s 18(1) and within the period prescribed under Sub-section (2) is conditioned upon non-acceptance of the award. Sub-section (1) of Section 18 makes the matter clear thus:

Any person interested who has not accepted the award may by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court regarding his objection, be it to the measurement of the land the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation amount the persons interested.

290. The right and entitlement to seek reference would, therefore, arise when the amount of compensation was received under protest in writing which would manifest the intention of the owner of non-acceptance of the award. Section 11(2) opens with a non-obstante clause "notwithstanding anything contained in Sub-section (1)" and provides that "if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may without making further enquiry, made an award according to the terms of such agreement". By virtue of Sub-section (4), "notwithstanding anything contained in the Registration Act, 1908, no agreement made under Sub-section (2) shall be liable to registration under that Act". The award made u/s 11(2) in terms of the agreement is, therefore, an award with consent obviating the necessity of reference u/s 18.

291. The Court further held in the said decision that the Reference Court negated the contention of the State and its reliance on agreement of the parties on the ground that since the said agreements were not registered under Registration Act, they cannot contract out from statute. Therefore, the Reference Court has the power to award higher compensation. It is seen that in the contract they had agreed to receive compensation and 25 per cent more in addition thereto. They had also agreed not to seek any reference u/s 18. In the light of the above, no option is left to the parties u/s 18 to seek reference. Sub-section (2) of Section 11 gives right to the parties to enter into an agreement to receive award, compensation awarded u/s 11 in terms of the contract. In fact, it would be more expeditious to have the dispute sorted out so as to avoid delay in determination of proper compensation. The contract between the owners and the Collector in writing of the terms to be included in the award of the Collector is

conclusive and binds the parties. They would not be entitled to seek any reference for enhancement of the compensation required to be adjudicated u/s 23(1) of the Act. It would be seen that when compensation was received under protest, Section 18 gets attracted.

292. The Court further held in the said decision that the question of awarding interest and statutory benefits arises when the Civil Court finds that the amount of compensation awarded to the landowners by the Collector is not adequate and the prevailing market value is higher than the market value determined by the Land Acquisition Officer u/s 23(1). For entitlement to solatium u/s 23(2) "in addition to" market value the Court shall award solatium. u/s 28, if the Court gets power to award interest, when Court opines that the Collector "ought to have awarded compensation in excess of the sum which the Collector did award (sic) the compensation. In other words, valid reference u/s 18 confers jurisdiction on the Civil Court to consider whether the compensation awarded by the Collector is just and fair. Thereafter, when it finds that the Collector ought to have awarded higher compensation, the Civil Court gets jurisdiction to award statutory benefits on higher compensation from the date of taking possession only. In view of the specific contract made by the respondents in terms of Section 11(2), they are not entitled to seek a reference. Consequently, the Civil Court is devoid of jurisdiction to go into the adequacy of compensation awarded by the Collector or prevailing market value as on the date of notification u/s 4(1) to determine the compensation u/s 23(1) and to grant statutory benefits.

293. The Court further held in the said decision that by operation of Section 11(4), the need for registration of the agreement is obviated. As seen in the contract, the respondents have foregone their right of seeking reference in lieu of 25 per cent more than the compensation determined by the Collector u/s 11(2) of the Act. In fact, 25 per cent in addition to the market value determined by the Collector in his award u/s 11(1) had been paid as the consideration to forego reference. Even otherwise, once an agreement was entered by the parties, the question of objection to receive compensation under protest does not arise. So, they have no right to seek a reference to the Civil Court u/s 18 of the Act.

294. In the decision reported in *State of Karnataka and Another Vs. Sangappa Dyavappa Biradar and Others*, , the Hon"ble Supreme Court held that a right of a landholder to obtain an order of reference would arise only when he has not accepted the award. Once such award is accepted, no legal right in him survives for claiming a reference to the Civil Court. An agreement between the parties as regards the value of the lands acquired by the State is binding on the parties. So long as such agreement and consequently the consent awards are not set aside in an appropriate proceeding by a Court of Law having jurisdiction in relation thereto, the same remain binding. It is one thing to say that agreements are void or voidable in terms of the provisions of the Indian Contract Act having been obtained by fraud, collusion, etc., or are against public policy but it is another thing to say maintained their writ petitions. We have noticed hereinbefore that

even in the writ petitions, the prayers made by the respondents were for quashing the order dated 23.8.1999 passed by the Special Land Acquisition Officer and for issuance of a direction upon him to refer the matter to the Civil Court. The High Court while exercising its jurisdiction under Article 226 of the Constitution, thus, could not have substituted the award passed by the Land Acquisition Officer by reason of the impugned judgment. Furthermore, the question as regards the validity of the agreements had not been raised before the High Court. As indicated hereinbefore, the Division Bench of the High Court had also rejected the contention raised on behalf of the respondents herein to the effect that the agreements did not conform to the requirements of Article 299 of the Constitution or had not been drawn up in the prescribed proforma.

295. The Court further held in the said decision that an award under the Act is passed either on consent of the parties or on adjudication of rival claims. For the purpose of passing a consent award, it was not necessary to comply with the provisions of Article 299 of the Constitution. An agreement between the parties need not furthermore be strictly in terms of a prescribed format.

296. The Court further held in the said decision that the respondents having accepted the award without any demur were estopped and precluded from maintaining an application for reference in terms of Section 18 of the Act. It is also trite that by reason of such agreement, the right to receive amount by way of solatium or interest, etc. can be waived.

297. In a recent case (Talson Real Estate Pvt. Ltd. v. State of Maharashtra and Ors.) decided on 02.05.2007, the Hon"ble Supreme Court held as follows: [page 2, para 5, 6 and 7]

...it appears that subsequently a corrigendum No. LAQ/48/30/2000 was issued by the SLAO (14) Pune., to the notification u/s 4 which was published in MGG, Pune Division Part-I (Supplement), Pune on 02.03.2000 in two daily newspapers "Kesari" and "Prabhat" on 01.06.2000. Similarly, corrigendum to the declaration u/s 6 of the Act was issued by the Additional Commissioner, Pune Division, Pune, on 01.06.2000. The corrigendum to Section 6 was published in MGG, Pune Division Part-I (Supplement), Pune, on 02.03.2000 and in daily newspapers "Sanz Samachar" on 01.03.2000 and "Samana" on 01.06,2000. It appears from the record that detail of the publication of the corrigendum issued u/s 6 of the Act was published on website on 12.06.2000. The record also reveals that the general notice under Sections 4(1), 6(1), 6(2), 9(1) and 9(2) were notified on Notice Board at Talathi and Tehsil Notice Board. Details of such publication are as below:

-----				Talathi	Tehsil
-----				1	Section 4(1)
notification		30.04.1997			02.05.1997
-----				2	Corrigendum
to	Section	4(1)	17.05.2000	22.05.2000	notification

-----					3	Section 6(1)
(2)	notification		20.06.1998			22.06.1998
-----					4	Corrigendum
to	Section	6(1)(2)	17.05.2000	22.05.2000		notification
-----					5	Section 9(1)
(2)	public notice		20.06.1998			22.06.1998
-----					6.	Corrigendum
to	Section	9(1)(2)	17.05.2000	22.05.2000		public notice

The SLAO (14), Pune, finally made an award of the acquired lands bearing Survey No. 23 (Part), admeasuring 2 hectares and 78 acres and awarded a sum of Rs. 73,86,740/- as compensation payable to as many as 84 claimants-owners of the lands including the appellant-company.

Feeling aggrieved, the appellant-company filed W.P. No. 726/2002 before the High Court of Judicature at Bombay seeking quashing of the acquisition proceedings and the award made by the Collector inter alia on the ground of failure of the respondents to afford an opportunity to the appellant-company to file objection and also not giving personal hearing to it u/s 5A of the Act.

298. The Court further held in the said decision that it is not in dispute that Section 4(1) notification was published in MGG, Pune Division, Part- I (Supplement) on 17.04.1997 and two daily newspapers, namely, "Kesari" and "Prabhat" on the same day. The notification was also published on site on 13.04.1997. In the Schedule to the notification, survey numbers of the proposed lands with respective areas were provided in column Nos. 1 and 2 and the public purpose for which the lands were required was stated as installation of "132 K.V Sub-station". The aforesaid notification was followed by a declaration u/s 6 of the Act issued by the Additional Commissioner, Pune Division, on 18.04.1998 which was published in MGG, Pune Division, Part-I (Extraordinary) dated 18.04.1998 and Part-I (Supplement) dated 11.06.1998 respectively. The declaration u/s 6 was also published in two daily newspapers "Aaj ka Anand" on 29.04.1998 and "Rashtratej" dated 30.04.1998 as also on the site on 08.07.1998. A clarification to the notification u/s 4 by way of corrigendum was issued on 01.02.2000 by the SLAO, Pune which was published in MGG, Pune Division, Part-I (Supplement) dated 02.03.2000 and in two daily newspapers "Kesari" and "Prabhat" on 01.06.2000. The corrigendum was also published on the site. Similarly, corrigendum to declaration u/s 6 was issued on 16.02.2000 which was also published in MGG, Pune Division, Part-I (Supplement) dated 02.03.2000 and in two daily newspapers, namely, "Saanz Samachar" dated 01.03.2000 and "Samaria" on 01.06.2000. The corrigendum was also published on the site on 12.05.2000. Joint notices under Sections 4(1), 6(1), 6(2) and 9(1X2) were duly published on Notice Board at Talathi and Tehsil Notice Board on the dates specified in column Nos. 2 and 3 of the above extracted table.

299. In the decision reported in 1997(5) Supreme Court Cases 421, Abhey Ram

(Dead) By Lrs. and Ors. v. Union of India and Ors., the Hon''ble Supreme Court held that it is true that a Bench of this Court has considered the effect of such a quashing in Delhi Development Authority v. Sudan Singh. But, unfortunately, in that case the operative part of the judgment referred to earlier has not been brought to the notice of this Court. Therefore, the ratio therein has no application to the facts in this case. It is also true that in Yusufbhai Noormohmed Nendoliya case this Court had also observed that it would ensure the benefit to those petitioners. In view of the fact that the notification u/s 4(1) is a composite one and equally the declaration u/s 6 is also a composite one, unless the declaration u/s 6 is quashed in toto, it does not operate as if the entire declaration requires to be quashed. It is seen that the appellants had not filed any objections to the notice issued u/s 5A.

300. In the decision reported in Delhi Administration Vs. Gurdip Singh Uban and Others etc., , the Hon''ble Supreme Court held that in connection with owners or persons interested who have not filed objections u/s 5A, in principle, it must be accepted that they had no objection to the Section 4 notification operating in respect of their property. On the other hand, in respect of those who filed objections, they might have locus standi to contend that the Section 5A enquiry was not conducted properly. We, therefore, agree in principle with the view of the three-Judge Bench in Abhey Ram case that those who have not filed objections u/s 5A, could not be allowed to contend that the Section 5A enquiry was bad and that consequently the Section 6 declaration must be struck down and that then the Section 4 notification would lapse. If, therefore, no objections were filed by the respondents, logically the Section 6 declaration must be deemed to be in force so far as they are concerned.

301. The Court further held in the said decision that learned Senior Counsel for the respondents contends that the judgment of the Division Bench dated 18.11.1988 in B.R. Gupta case had quashed the entire Section 5A proceedings and that even in case the respondents had filed objections, the position would not have been different. We cannot accept this contention. We are of the view that in respect of those who did not object to the Section 4(1) notification by filing objections u/s 5A, the said notification must be treated as being in force. The writ petitioners cannot be permitted to contend that in some other cases, the notification was quashed and that such quashing would also ensure to their benefit.

302. In the decision reported in Delhi Administration Vs. Gurdip Singh Uban and Others, , the Hon''ble Supreme Court held that it is true that Sudan Singh is in favour of the applicants before us in stating that the entire land acquisition proceedings stood quashed. But we may point out that Sudan Singh was explained in Abhey Ram and was distinguished in para 12 on the ground that the brief operative order of the High Court in Balak Ram Gupta dated 14.10.1988 passed in each of the 73 writ petitions was not noticed in Sudan Singh and that it was that order dated 14.10.1988 that was material and not the wide

observations in the latter order dated 18.11.1988 where reasons were given. In fact, in the judgment under review in civil appeals on 20.8.1999, this Court agreed with the above reasoning in *Abhey Ram* and followed the same in preference to *Sudan Singh*. The Court also agreed with *Abhey Ram* that a landowner who failed to file objections in Section 5A inquiry, could not be allowed to raise these questions.

303. The Court further held in the said decision that now objections u/s 5A, if filed, can relate to the contention that (i) the purpose for which land is being acquired is not a public purpose, (ii) that even if the purpose is a public purpose, the land of the objector is not necessary, in the sense that the public purpose could be served by other land already proposed or some other land to which the objector may refer, or (iii) that in any event, even if this land is necessary for the public purpose, the special fact-situation in which the objector is placed, it is a fit case for omitting his land from the acquisition. Objection (ii) is personal to the land and objection (iii) is personal to the objector.

304. The Court further held in the said decision that now in the (ii) and (iii) types of objections, there is a personal element which has to be pleaded in Section 5A inquiry and if objections have not been filed, the notification must be conclusive proof that the said person had "waived" all objections which were personal and which he could have raised. However, so far as objection (i) is concerned, even in case objections are not filed, the affected party can challenge in Court that the purpose was not a public purpose.

305. The Court further held in the said decision that learned Solicitor General *Shri Salve* rightly argued that in respect of each landowner whose land is acquired, the Section 4 notification if it is sought to be avoided on personal grounds as stated in (ii) and (iii) above, it is necessary that objection be filed to avoid a voidable notification. Otherwise, the notification which is not avoided on any personal grounds, remains operative and personal objections are deemed to be waived.

306. The Court further held in the said decision that in the present cases there is no dispute that the purpose is a public purpose. The applicant had not filed objections on grounds personally applicable to him or to his land seeking exclusion from acquisition, and the objections in that behalf must be deemed to have been waived. Such a person cannot be allowed to file a writ petition seeking the quashing of Section 5A inquiry and Section 6 declaration on personal grounds if he had not filed objections. Points 4 and 5 are decided accordingly against the applicants.

307. In the decision reported in 26 CWN 359, *Bharam Chand Guin v. Kanak Sarkar*, the Court held that this clearly is a consideration which cannot be permitted to weigh with the Court when the question is whether or not the requirements of the statute have been carried out. It has to be definitely found that the defendant could not be found after reasonable and diligent enquiries,

and that the person on whom the notice was served was an adult male member residing with him. It is essential that the requirements of the statute in these matters should be strictly carried out.

308. In the decision reported in Shambhu Nath Ghosh and Others Vs. Bejoy Lakshmi Cotton Mills Ltd. and Others, , the Court held as follows: [page 554, para 4]

...Whether in making the order the Governor has acted in accordance with law remains open. There is no doubt that where the authentication order states, as it does in the present case, that the Governor is satisfied of a certain matter, the presumption is that the Governor has been so satisfied. This, however, is only a presumption and can be rebutted.

309. The Court further held in the said decision that in the present case the applicant has relied on materials produced in the Court on behalf of the State Government, to rebut that presumption. It was frankly conceded before us by the learned Advocate General that these matters as regards sanction or satisfaction did not at any stage receive the attention of the Minister-in-Charge. An order made by the Secretary of the Department on the basis of standing orders made by the Minister-in-Charge, which standing order itself had been made by the Minister on the authority conferred on him by the Rules of Business framed by the Governor under Article 166(3) of the Constitution, is said to produce the position that the business of the Government insofar as it consists in giving sanction u/s 5(2) or being satisfied u/s 4 or Section 6 of the Land Development Act, has been delegated by the Minister to the Assistant Secretary of the Department. The first question is, as already indicated, can there be such delegation in law? On behalf of the applicant Dr. Gupta contended that it would be unreasonable and improper to recognise such a power of delegation unless it is clearly conferred by the Constitution and, according to him, there is no clear conferment. It appears that in *Shyamaghana Ray v. State*, AIR 1952 Ori 200 , the Orissa High Court held in considering whether there had been satisfaction of the Provincial Government in connection with an order of detention that while under the Rules of Business made by the Governor the satisfaction of the concerned Minister must be taken to be the satisfaction of the Government, there was no legal provision at all for delegation of that responsibility from the Minister-in-Charge to the Secretary. The learned Chief Justice of Orissa High Court thus observed as follows:

Sub-article (3) of Article 166 of the Constitution makes it clear that the allocation of the business of the Government is to be amongst the Ministers of the Government. A Secretary cannot be allocated any such business, at any rate, no such business which involves a statutory responsibility though by virtue of the rules made for the more convenient transaction of business he can form an intermediate link.

310. The Court further held in the said decision as follows: [page-556, para-16]

...When a question of satisfaction u/s 4 is to be considered, there is as yet no proposal by the department that the matter should be taken up by the Land Planning Committee. When, however, the stage of Section 5 arises and the Government has to decide whether a direction should be given to prepare a development scheme, the department may either decide to give no such direction or propose that such a direction should be given. As soon as such a proposal is made by the department, it comes within item 18 so that before the direction itself is given, the matter has to go to the Minister. In my view, it does not cease to be a case under item 17 when the direction has been given but continues to be covered by the item so long as the case is not finally disposed of. The consequence, in my opinion, is that the matter has to be placed before the Minister for orders first before the direction is given u/s 5(1) and then after a scheme has been submitted it has to be placed again before him for orders whether Government will sanction the scheme and again for orders whether Government is satisfied that any land in a notified area for which the scheme in that area is needed for the purpose of executing such scheme.

311. In the decision reported in *Mt. Banarasi Devi Jhunjhunwala Vs. The State of Bihar and Another*, , the Court held that, "we accept the principle laid down in the above decision as correct and for the reasons given above, we hold that there was no valid service of notice u/s 12(2) of the Act upon the petitioner, Mosammat Banarasi Devi Jhunjhunwala and, therefore, the period of limitation for filing the application u/s 18(1) of the Act would be six months from the date of the Collector's award, namely six months from 24.2.1956. If that is the correct view of the law, it follows that the application of the petitioner u/s 18(1) of the Act is not barred by limitation. For these reasons, we hold that the Collector was bound in the circumstances of this case to make a reference to the District Judge u/s 18(1) of the Act I of 1894".

312. In the decision reported in *Muthu Vs. Government of Tamil Nadu*, , the Court held as follows : [page-237, para-2]

Sub-section (3) of Section 45 of the Act contemplates and lays down other modes of service only when such person cannot be found. The service of any notice under the Act in the manner provided therein is a mandate of law, and the due procedure and modalities having been evolved, there cannot be a by passing of the same by the officials, and if they do so, they will be opening the gates for challenge of the proceedings as an illegality, it is not up to the officials to choose modes of service as suit them, if they do not conform to the statutory norms. As contemplated in Sub-sections (1) and (2) of Section 45, service on the person concerned by delivering or tendering a copy of the notice shall be first attempted. Only when such service is not feasible, on the ground that such person cannot be found, the other modes of services as contemplated in Sub-section (3) of Section 45 should be resorted to. If the person cannot be found, service on an adult male member of the family should be attempted, and if no such adult male member can be found, then only service by affixture on the

outer door of the house in which the person therein named ordinarily dwells or carries on business or by fixing a copy thereof in some conspicuous place in the office of the officer who signed the notice or in Collector's office or in the Court house should be done. In such a case, in addition to the above modes, affixture of the copy of the notice in some conspicuous part of the land to be acquired should also be done. The proviso to Sub-section (3) says that the notice may, if the Collector or the Judge so directs, be sent by registered post in a letter addressed to the person named therein at his last known residence, address or place of business. Merely on the ground that such person is non-resident of the village, Section 45(3) does not enable the authorities to resort to a mode of service by affixture in the land subject-matter of acquisition.

313. In the decision reported in *Lakshmi Narain Vs. The Union of India (UOI) and Another*, , the Court held as follows : [page-31, para-14]

...A pleading is not required to State law, for the obvious reason that it is for the Court itself to find out and examine all pleas of law that may apply to the facts. If the plaintiff had not stated those facts in the plaint then under Rule 2 of Order 8 of the Code it would have been imperative for defendant No. 1 to raise by its pleading all matters which show a suit not to be maintainable. But, when the necessary facts are there in the plaint, it was not necessary for defendant No. 1 to particularise them in its defence and to state the legal effect of those facts. The rule of pleading does not require that the legal consequences flowing from the admitted facts should also be stated. Therefore, the omission of defendant No. 1 to state in the written statement the law of law applicable to the facts averred in the plaint does not amount to waiver on its part. This contention of learned Counsel, therefore, is absolutely without substance and must be rejected.

314. In the decision reported in *Bejoy Lakshmi Cotton Mills Ltd. Vs. State of West Bengal and Others*, , the Court held as follows: (SC pages-37 and 38, para-16]

We have already referred to the Rules of Business and standing orders, We are in entire agreement with the views expressed by both the learned Single Judge as well as the Division Bench of the Calcutta High Court regarding the scope of Article 166(2) of the Constitution. The learned Judges are perfectly correct in their view that what the authentication makes conclusive, under Article 166(2), is that the order has been made by the Governor. But the further question as to whether, in making the order, the Governor has acted in accordance with law, remains open for adjudication... .

We are also in agreement with the views expressed by the High Court that the Governor's personal satisfaction was not necessary in this case as this is not an item of business, with respect to which, the Governor is, by or under the Constitution, required to act in his discretion. Although the executive Government of a State is vested in the Governor, actually it is carried on by Ministers; and, in this particular case, under Rules 4 and 5 of the Rules of Business, referred to above, the business of Government is to be transacted in

the various departments specified in the First Schedule thereof. Item 5 therein is the Department of Land and Land Revenue and the Governor has allotted the business of that Department to a Minister. We are further in agreement with the views of the High Court that the said Minister-in-Charge, has got power to make standing orders regarding the disposal of cases, in his Department, under the Rules of Business issued by the Governor, on August 25, 1951, under Article 166(3) of the Constitution. In this case, there is no controversy that the Minister-in-Charge of the Department of Land and Land Revenue, has made standing orders on November 29, 1951, by virtue of powers given to him under Rules 19 and 20 of the Rules of Business.

315. The Court further held in the said decision as follows: [page-40, Para-23]

To sum up, we are not inclined, to accept the contentions of the appellant, that the issue of a notification, u/s 4 of the Act, is a matter which should have been dealt with by the Minister-in-Charge himself, on the basis that it is covered by item 18 of Standing Order No. 2. That item does not as pointed out above, apply. If that is so, it is clear that the issue of a notification, u/s 4 of the Act, and the satisfaction to be arrived at, that the land, in the area in question, is required or is likely to be required for a public purpose, are matters which do not require to be dealt with by the Minister himself Under Standing Order No. 5, the Minister-in-Charge has authorized the Secretary to permit a Deputy or an Assistant Secretary of the Department, to dispose of certain types of cases and the Secretary has also issued an order, which has been referred to earlier, in conformity with Standing Order No. 5, and it is by virtue of this provision that the notification, u/s 4, was issued by the Assistant Secretary, Land and Revenue Department, Government of West Bengal. We are in entire agreement with the reasons given by the Division Bench of the Calcutta High Court for upholding the validity of the notification, dated February, 4, 1955, issued u/s 4 of the Act.

316. In the decision reported in Sulochana Dadaji Vs. Commissioner, Nagpur Division, Nagpur and Others, , the Court held that Section 52A of the Land Acquisition Act, 1894 would no doubt permit the Collector to delegate any of his powers or functions and this would postulate the possibility of his retaining some powers while delegating other powers. It is however purely a question of fact as to what powers he has delegated.

317. When on issuance of notification u/s 4, objections were filed before the Land Acquisition Officer whose report was rejected by the Collector after further enquiry into the matter but the actual order of delegation was not produced.

318. Held, in the absence of the requisite material in the shape of the order of delegation, it was not possible to accept the submission that the delegation of the Collector's power u/s 5A was not complete or was limited to some functions only. Without seeing the order no assumption could be made that the delegation was not or might not have been complete or that the Collector had reserved the power of making a recommendation.

319. In the decision reported in 2005(2) CLT 44, *Rajesh Chandra Ghosh v. State of West Bengal and Ors.*, the Court held as follows ; [page-46, para-81]

The general principles of law relating to abolition of post appear to have been established on the basis of decided authorities both of the Supreme Court and of High Courts. The abolition of post is usually regarded by a Court of Law as a matter of executive policy. If an employee loses his job by virtue of abolition of a post that he holds he cannot question such policy decision of abolition of the post that he holds on the ground that the service of the employee has been terminated or that he has been dismissed or removed from the service. Normally, therefore, the employees cannot complain of breach of principles of natural justice if he loses his job by virtue of an order of abolition of post simpliciter. The Courts usually do not interfere in the matters relating to abolition of post simpliciter. If, however, it is shown that such abolition was made arbitrarily or mala fide or that the true intention of such an order of abolition is to remove or dismiss an employee concerned then and in that event judicial interference is called for and the employee concerned has a remedy.

320. In the decision reported in *Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others*, , the Court held as follows: [page-37, para-13]

...The intention behind the Government actions and purposes is to further the public welfare and the national interest. Public good is synonymous with protection of the interests of the citizens as a territorial unit or nation as a whole. It also aims to further the public policies. The limitations of the policies are kept along with the public interest to prevent the exploitation or misuse or abuse of the office or the executive actions for personal gain or for illegal gratification.

321. The Court further held in the said decision as follows : [page-38, paras -17 and 18]

The Court, therefore, would be required to consider whether the policy sought to be relied on and directed by the Minister was to further public good or was a means to fritter away the public property for personal gain or to misuse public power. The public policy under the Act is that the acquired land should be used only for public purpose declared u/s 6(1) of the Act or any other public purpose and, under no circumstances, for any private purpose.

322. In the decision reported in 2007(1) CLJ (Cal) decided on February 14, 2007, *Shree Padma Sugar Exports Pvt. Ltd. and Ors. v. Collector, L.A. Department, Hooghly and Ors.*, the Court held as follows : [page-751, para-7]

Mr. Advocate General, appearing for the fourth respondent, has led the arguments for the respondents who all are represented by their Counsel as well. By referring me to the notification and the pleadings of the parties, he has contended that since the proceedings were initiated for acquiring land for a public purpose at public expense, the petitioners were simply not entitled to say that the acquisition was for a company. He has said that in the notification no

reference was made to any company, though reference to a project, which was not a company, was made. By inviting my attention to the application of the requiring body, the fifth respondent, the West Bengal Industrial Development Corporation, a Government company within the meaning of Section 617 of the Companies Act, 1956, dated July 7th, 2006, and by reading out to me various provisions of the Land Acquisition Act, 1894 and in particular the ones in Sections 3(cc), (e) & (f), 4 & 6, he has contended that there was no scope for the petitioners to say that the acquisition was for a company simpliciter, when the requiring body was a Government company, and the entire fund needed for the acquisition was to come, and actually came, from it. To show that a mere "project" is not a company, he has read out to me the meaning of the expression given in Corpus Juris Secundum: Vol. LXXIII and Black's Law Dictionary.

323. In the decision reported in Kunwar Pal Singh (Dead) by L.Rs. Vs. State of U.P. and Others, , the Court held as follows : [SC page-1678, para-16]

Section 6(2), on a plain reading, deals with the various modes of publication and they are : (a) publication in the Official Gazette, (b) publication in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and (c) causing public notice of the substance of such declaration to be given at convenient places in the said locality. There is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. The principle is well-settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefore in the Act.

324. The Court further held in the said decision as follows: [SC page-1680, para-251]

Again, in State of Karnataka Vs. A.B. Nagaraj and Another, , this Court reiterating the proposition of law has held that modes of publication of declaration prescribed u/s 6(2) are conjoint and cumulative and all of them must be resorted to and completed. Sub-section (2) of Section 6 of the Act necessarily makes it abundantly clear that the last of the dates of the publication and giving of such public notice shall "hereinafter" be referred to as the date of publication of the declaration and limitation period of two years for making award u/s 11A has to be counted as the last of the dates out of the three modes of publication specified in Section 6 of the Act.

325. The Court further held, in the said decision as follows : [page-1680, para-27]

The ratio of the judgment in State of Haryana and Another Vs. Raghubir Dayal, , relied upon by the respondents, is of no assistance or help to them, in that case, while dealing with the provisions of Sections 4(1), 5A and 6(2) of the Act, this Court held : "Since there is an opportunity already given to the owner of the land or persons having interest in the land to raise their objections during the inquiry

u/s 5A, or otherwise in case of dispensing with inquiry u/s 5A unless they show any grave prejudice caused to them in non-publication u/s 6(1), the omission to publish the substance of the declaration u/s 6(1) in the locality would not render the declaration of Section 6 invalid. However, this does not mean that the officers should not comply with the requirement of law. It is their duty to do it.

326. In the decision reported in Union of India (UOI) and Others Vs. Ashok Kumar and Others, , the Court held as follows : [SC page -124, para - 20]

Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fide in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can in our opinion, be deduced as a reasonable and inescapable inference from proved facts S. Pratap Singh Vs. The State of Punjab, . It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of some allegations demand proof of a high order of credibility. As noted by this Court in E.P. Royappa Vs. State of Tamil Nadu and Another, , Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.

327. In the decision reported in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, , the Supreme Court observed as follows:

There, however, the prerogative writ of mandamus confined only to public authorities to compel performance of public duty. The "public authority" for them means every body which is created by statute and whose powers and duties are defined by statute. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all public authorities. But there is no such limitation for our High Courts to issue the writ in the nature of mandamus. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

328. In the decision reported in *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*, the Supreme Court held as follows:

...the Court pointed out that the duty of the Court is to confine itself to the question of legality. Its concern should be:

1. whether a decision-making authority exceeded its powers?
2. committed an error of law;
3. committed a breach of the rules of natural justice;
4. reached a decision which no reasonable Tribunal would have reached; or
5. abused its powers.

329. The Court further held that in *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, it was pointed out that while exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the decision-making process? In this case, the following passage from Professor Wade's *Administrative Law* was relied upon: (SCC p. 457, para 17)

The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts *ultra vires*. The Court must, therefore, resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which legislature is presumed to have intended.

330. In the decision reported in *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*, the Hon'ble Court held that the State raised a preliminary objection that the Presidential Order dated 27th June, 1975 made under Article 359 of the Constitution suspending the detenus right to enforce any of the rights conferred by Articles 14, 21 and 22 of the Constitution and the continuance of emergency during which by virtue of Article 358 all rights conferred by Article 19 stand suspended are a bar at the threshold for the respondents to invoke the jurisdiction of the High Court under Article 226 of the Constitution and to ask for writs of habeas corpus.

331. The Hon'ble Supreme Court further held in the decision that notwithstanding the continuance of emergency and the presidential order suspending the enforcement of fundamental rights conferred by Articles 14, 21 and 22 the High Courts can examine whether an order of detention is in accordance with the provisions of the Maintenance of Internal Security Act (hereinafter referred to as the Act), which constitute the conditions precedent to the exercise of powers thereunder excepting those provisions of the Act which

are merely procedural or whether the order was made mala fide or was made on the basis of relevant materials by which the detaining authority could have been satisfied that the order was necessary. The High Courts also held that in spite of suspension of enforcement of fundamental rights conferred by Articles 21 and 22 of the Constitution a person's right to freedom from arrest or detention except in accordance with law can be enforced only where such arrest and detention are not in accordance with those provisions of the statute which form the conditions precedent to the exercise of power under that statute as distinguished from merely procedural provisions or are mala fide or are not based on relevant materials by which the detaining authority could have been satisfied that the order of detention was necessary.

332. In the decision reported in *Hardev Motor Transport Vs. State of M.P. and Others*, , the Hon"ble Supreme Court held that the role of an explanation of a statute is well-known. By inserting an explanation in the Schedule of the Act, the main provisions of the Act cannot be defeated. By reason of an explanation, even otherwise, the scope and effect of a provision cannot be enlarged. It was so held in *S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others*, , as follows: [at p. 593, para 52 of AIR]

Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is:

- a) to explain the meaning and intendment of the Act itself,
- b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,
- c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
- d) an explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment... .

333. In the decision reported in *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, , the Hon"ble Supreme Court observed that on the question of reasonableness reference may be made to *Wade on Administrative Law*, 7th Edn., d. 399. The learned author observed as follows:

The Court must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate.

334. Quoting Lord Hailsham, L. C. in *W. (an infant), Re*, 1971 AC 682 where he

stated as follows:

This is not therefore the standard of the man on the Clapham omnibus. It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do. It distinguishes between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful it is one to which no reasonable authority could have come. This is the essence of what is now commonly called "Wednesbury unreasonableness", after the now famous case in which Lord Greene, M.R. expounded it as follows:

it is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said and often is said to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington, L.J. in *Short v. Poole Corporation* 1925 All E R Rep 74, gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith, and, in fact, all these things run into one another.

335. This has become the most frequently cited passage (though most commonly cited only by its nickname) in administrative law. It explains how "unreasonableness", in its classic formulation, covers a multitude of sins. These various errors commonly result from paying too much attention to the mere words of the Act and too little to its general scheme and purpose, and from the fallacy that unrestricted language naturally confers unfettered discretion.

336. Unreasonableness has thus become a generalised rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category or errors commonly described as "irrelevant considerations", and mistakes and misundertakings which can be classed as self-misdirection, or addressing oneself to the wrong question. But the language used in the cases shows that, while the abuse of discretion has this variety of differing legal facets, in practice the Courts often treat them as distinct. When several of them will fit the case the Court is often inclined to invoke them all. The one principle that unites them is that powers must be confined within the true scope and policy of the Act.

337. The Court further held that the standard of unreasonable is nominally

pitched very high: "so absurd that no sensible person could ever dream that it lay within the powers of the authority" (Lord Greene, M.R.): "so wrong that no reasonable person could sensibly take that view" (Lord Denning, M.R.), "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it" (Lord Diplock). It might seem from such language that the deliberate decisions of Ministers and other responsible public authorities could almost never be found wanting. But, as may be seen in the following pages, there are abundant instances of legally unreasonable decisions and actions at all levels. This is not because Ministers and public authorities take leave of their senses, but because the Courts in deciding cases tend to lower the threshold of unreasonableness to fit their more exacting ideas of administrative good behaviour.

338. The Court further held in the said decision as follows:

...every decision of the authority except the judicial decision is amenable to judicial review and reviewability of such a decision cannot now be questioned. However, a judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable/irrational or mala fide. On the principle of good governance reference was made to a decision of the Division Bench of the Bombay High Court in *State of Bombay Vs. Laxmidas Ranchhoddas and Another*, . It was submitted that bad governance sets a bad example... .

339. In the decision reported in *Ashok Kumar alias Golu Vs. Union of India and others*, , the Hon"ble Supreme Court held as follows: [SCC p. 509 para 9]

This is not a case of legislative incompetence to enact Section 433A. No such submission was made. Besides the question of vires of Section 433A of the Code has been determined by the Constitution Bench of this Court in *Maru Ram and Others Vs. Union of India (UOI) and Others*, . This Court repelled all the thrusts aimed at challenging the Constitutional validity of Section 433A. But Counsel submitted that the question was not examined from the historical perspective of the twin legislations. Counsel for the State submitted that it was not permissible for us to reopen the challenge closed by the Constitution Bench on the specious plea that a particular argument or plea was not canvassed or made before that Bench. The objection raised by Counsel for the State Government is perhaps not without substance but we do not propose to deal with it because even otherwise we see no merit in the submission of the petitioner's Counsel. It is only when a legislature which has no power to legislate frames a legislation so camouflaging it as to appear to be within its competence when it knows it is not, it can be said that the legislation so enacted is colourable legislation. In *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, the Orissa Agricultural Income Tax (Amendment) Act, 1950*, was challenged on the ground of colourable legislation or a fraud on the Constitution as its real purpose was to effect a drastic reduction in the amount of compensation payable under the Orissa Estates Abolition Act,

1952. The facts were that a Bill relating to the Orissa Estates Abolition Act, 1952 was published in the gazette on January 3, 1950.

It provided that any sum payable for agricultural income tax for the previous year should be deducted from the gross asset of an estate for working out the net income on the basis whereof compensation payable to the estate owner could be determined. Thereafter on January 8, 1950, a Bill to amend the Orissa Agricultural Income Tax Act, 1947, was introduced to enhance the highest rate of tax from 3 annas to 4 annas in a rupee and to reduce the highest slab from Rs. 30,000/- to Rs. 20,000/-. The next Chief Minister, however, dropped this Bill and introduced a fresh Bill enhancing the highest rate to 12 annas 6 pies in a rupee and reducing the highest slab to Rs. 15,000/- only. On the same becoming law it was challenged on the ground that the real purpose of the legislation was to drastically reduce the compensation payable to the estate owners. Mukherjee, J. who spoke for the Court observed as under; (SCR pp. 10-11)

It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is Constitutional or not is thus always a question of power.

340. Thus, the whole doctrine resolves itself into a question of competency of the concerned legislature to enact the impugned legislation. If the legislature has transgressed the limits of its powers and if such transgression is indirect, covert or disguised, such a legislation is described as colourable in legal parlance. The idea conveyed by the use of the said expression is that although apparently a legislature in passing the statute purported to act within the limits of its powers, it had in substance and reality transgressed its powers, the transgression being veiled by what appears on close scrutiny to be a mere pretence or disguise. In other words if in pith and substance the legislation does not belong to the subject falling within the limits of its power but is outside it, the mere form of the legislation will not be determinate of the legislative competence. In *Sonapur Tea Co., Ltd. Vs. Must. Mazirunnessa*, it was reiterated relying on *Gajapati* case (supra) that the doctrine of colourable legislation really postulates that legislation attempts to do indirectly what it cannot do directly. Such is not the case before us. It is nobody's contention that Parliament was not competent to amend the Criminal Procedure Code by which Section 433A was inserted. Whether the connecting Indian Penal Code (Amendment) Bill ought to have been cleared or not was a matter left to the wisdom of the Lok Sabha. Merely because the Criminal Procedure Bill was made law and the Indian Penal Code (Amendment) Bill was passed by the Rajya Sabha did not obligate the Lok Sabha to clear it. The Lok Sabha could have its own views on the proposed Indian Penal Code

Amendments. It may agree with the executive's policy reflected in the Bill, with or without modifications, or not at all. Merely because in the subsequent instructions issued by the letter of July 10, 1979 and the accompanying note (Annexure II) the Joint Secretary had interlinked the two Bills, the Lok Sabha was under no obligation to adopt the measure as such representation could not operate as estoppel against it. Even the direct attempt on the part of the High Court of Himachal Pradesh in the raging case to force the State Government to legislate, *State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others*, was disapproved by this Court as a matter falling outside the functions and duties of the judiciary. It is, therefore, obvious that no question of mala fides on the part of the legislature was involved in the enactment of one legislation and failure to enact another. There is no question of "legislative fraud" or "colourable legislation" involved in the backdrop of the legislative history of Section 433A of the Code as argued on behalf of the petitioner.

341. In the decision reported in *Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others*, , the Hon"ble Supreme Court held as follows:

Assuming that the funds of a State Transport Corporation consist only of the moneys which have been provided by the State Government, they cannot be regarded as part of the public revenue. No doubt the source of the funds would be public revenue but the funds themselves belong to the Corporation and are held by it as its own property. They cannot, therefore, be regarded as "public revenue" in any sense. Further, the Corporation is not a department of Government but is a separate legal entity and, therefore, money coming out of public revenue whether invested, loaned or granted to it would change their original character and become the funds or assets of the Corporation when they are invested in or transferred or loaned to it.

342. In the decision reported in *Calcutta State Transport Corporation Vs. Commissioner of Income Tax, West Bengal*, , *Calcutta State Transport Corporation v. Commissioner of Income Tax, W.B.*, the Hon"ble Supreme Court held that the assessee-corporation is not a "local authority" and therefore, not entitled to claim exemption of its income by virtue of Clause 20 in Section 10 of the Income Tax Act.

343. In the decision reported in 2001(1) SCC 182, *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors.*, the Court observed that it is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the same is dependent upon the facts and circumstances of each individual case. The facts in the matter under consideration is singularly singular. The entire chain of events smacks of some personal clash and adaptation of a method unknown to law in hottest of haste; this is however, apart from the issue of bias

which would be presently dealt with hereinafter. It is on this context, the observations of this Court in the case of Sayeedur Rehman Vs. The State of Bihar and Others, , seem to be rather apposite. This Court thus observed as follows: (SCC p. 338, para 11)

The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering the order, dated 22.4.1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.

344. In the decision reported in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, the Court held in the decision of Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, as follows:

On a consideration of the relevant cases cited at the bar the following proposition may be taken as well established; State owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public opinion is the paramount consideration. One of the methods of securing the public interest when it is considered necessary to dispose of a property is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situation where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.

345. In the case of Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, , the Court observed as follows:.

The public property owned by the State or by any instrumentality of the State should be generally sold by public auction or by inviting tenders. This Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities. They should undoubtedly act fairly. Their actions should be legitimate. Their dealings should be above board. Their transactions should be without aversion or affection. Nothing should be done by them, which gives an impression of bias, favouritism or nepotism. Ordinarily these factors would be absent the matter is brought to public auction or sale by tenders.

346. In the decision reported in 2007 AIR SCW 2045, Vishwanath Chaturvedi v. Union of India and Ors., the Hon"ble Supreme Court held that the ultimate test is whether the allegations have any substance. An enquiry should not be shut out at the threshold because a political opponent of a "person with political difference raises an allegation of commission of offence. Therefore, we mould the prayer in the writ petition and direct the CBI to enquire into alleged acquisition of

wealth by respondent Nos. 2-5 and find out as to whether the allegations made by the petitioner in regard to disproportionate assets to the known source of income of respondent Nos. 2-5 is correct or not and submit a report to the Union of India and on receipt of such report, the Union of India may take further steps depending upon the outcome of the preliminary enquiry into the assets of respondent Nos. 2-5.

347. The Court further held that the test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. It is wrong in law for the Court to judge the petitioners interest without looking into the subject-matter of his complaint and if the petitioner shows failure of public duty, the Court would be in error in dismissing the PIL.

348. In the decision reported in B.S. Minhas Vs. Indian Statistical Institute and Others, , the Hon''ble Supreme Court held in the decision of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , as follows: (SCC p. 503, para 10)

It is well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in Vitarelli v. Seaton 359 US 535, where the learned Judge held that:

An executive agency must be rigorously held to the standards by which it professes its action to be judged.... accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed ...this judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so... .

349. The aforesaid principle laid down by Mr. Justice Frankfurter in Vitarelli v. Seaton has been accepted as applicable in India by this Court in Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others, and in subsequent decision given in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , Mathew, J. quoted the above-referred observation of Mr. Justice Frankfurter with approval.

350. In the decision reported in B.K. Srinivasan and Others Vs. State of Karnataka and Others, , the Hon''ble Supreme Court held that where a law, whether Parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes.

351. The Court further held that it is necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner,

whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if it prescribes a plainly unreasonable mode of publication. It will take effect only when it is published through the customarily recognized official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient.

352. In the decision reported in *Dinesh Trivedi, M.P. and Others Vs. Union of India (UOI) and Others*, , the Court held that in modern Constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognised limitations; it is, by no means, absolute. This Court has had many an opportunity to express itself upon this issue. In the case of *The State of U.P. Vs. Raj Narain and Others*, , Mathew, J. eloquently expressed this proposition in the following words: (SCC p. 453, para 74)

353. In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary. When secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics of personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.

354. In the decision reported in *First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another*, , *First Land Acquisition Collector v. Nirodhi Prakash Gangoli*, the Hon"ble Supreme Court held that even a mere, allegation that power was exercised mala fide would not be enough and in support of such allegation specific materials should be placed before the Court. The burden of establishing mala fides is very heavy on the person who alleges it. Bearing in mind the aforesaid principles, if the circumstances of the case in hand are examined it would appear that the premises in question was required for the students of National Medical College, Calcutta and the notification issued in

December, 1982 had been quashed by the Court and the subsequent notification issued on 25.2.1994 also had been quashed by the Court, it is only thereafter the notification was issued under Sections 4(1) and 17(4) of the Act on 29.11.1994 which came up for consideration before the High Court. Apart from the fact that there had already been considerable delay in acquiring the premises in question on account of the intervention by Courts. The premises was badly needed for the occupation of the students of National Medical College, Calcutta. Thus, existence of urgency was writ large on the facts of the case and, therefore, the said exercise of the power in the case in hand, cannot be interfered with by a Court of Law on conclusion that there did not exist any emergency.

355. The Court further held that the acquisition proceeding, therefore, is held to be in accordance with law.

356. In the decision reported in *State of Maharashtra Vs. Manubhai Pragaji Vashi and others*, , the Hon"ble Supreme Court observed as follows:

The main facts highlighted and found by the High Court which were not successfully assailed before us may be stated. The State of Maharashtra has a reputation of being the premier State in India. Educationwise, it has several faculties, viz., Arts, Science, Engineering, Medicine and Law. Except law, all other faculties run by the recognised non-Government colleges are given grants-in-aid by the Government. The Government recognised non-Government law colleges in Maharashtra is the only faculty which is denied the above grants-in-aid. In the State of Maharashtra, there is only one Government Law College at Bombay. There has been an increase in demand for legal education. During the academic year 1985-86, the total number of law students in Maharashtra was about 25,700. The Government Counsel himself stated before the High Court during the time when the writ petitions were heard, that then the number of such students would be in the vicinity of 27,000 to 28,000. The heavy demand for legal education could not be met by the solitary law college run by the Government in Bombay. It resulted in private or non-Government law colleges coming up in Bombay and other parts of Maharashtra. All such colleges are recognized by the Government. There are 38 law colleges. The strength of the teaching staff is 544, comprising about 91 full-timers and the remaining part-time staff. The full-time non-teaching staff is about 400. The Government recognized private law colleges applied for aid as early as 1975. It was reiterated by the Chairman of the Bar Council of India on 1.12.1982. Resolutions were passed. Discussions took place and meetings were held. Information was invited and received by the Government from the various Principals and data was collected and the matter went on in like manner. But no final decision was taken nor was grants-in-aid afforded to the Government recognized private law colleges. It was challenging this inaction or hostile discriminatory attitude towards legal education in general and the Government recognised private law colleges, in particular, a Public Interest Litigation was started by Mr. M. P. Vashi, a practising Advocate and a member of the Bar Council of Maharashtra. The main

plea of the State was lack of funds and also the general or vague unsubstantiated statement that other private professional educational institutions were not receiving grants-in-aid. When prima facie, a plea of discrimination is made out, the burden of proof is on the State to show that it is not so; or that a valid and permissible classification exists for the differential treatment meted out to Government recognised private law colleges alone. There should be nexus between the basis of classification and the object of the Act under consideration. On the above crucial aspects, on an evaluation of Government's affidavits, they are found to be wanting, replete as they are with generalisations, good intention and achievements in other fields of education which are irrelevant.

357. The charge of discrimination stands unproved. It was further stated by the State that the maximum effort is taken by it to provide primary and secondary education to every child and that the weaker section of the society is taken care of within available financial resources and private professional colleges were given recognition only on condition that they will be self-supporting and will not insist for affording grants-in-aid. These pleas urged by the State are no answer to the charge of discrimination pleaded in the writ petitions. Paucity of funds can be no reason for discrimination. One fact of education cannot be selected for hostile discriminatory treatment, whatever may be the other laudable activities pursued by the Government in the matter of education or its discretion to assign the order of priorities in different spheres of education. In a fit case, it is open to the Court to direct the executive to carry out the directive principles of the Constitution, when there is inaction or stow action by the State. In the report submitted by Prof. Mogh in August, 1986, he recommended that grants-in-aid should be extended to non-Government law colleges and a sum of Rs. 89.92 lakhs is required for this purpose with an increase every year depending on the number of colleges etc. The total budget for the State in the year 1987-99 was Rs. 5,351 crores, out of which Rs. 791 crores had been earmarked for expenditure for education. Out of 659 colleges in the entire State, 198 colleges do not receive grants-in-aid. 38 non-Government law colleges form part of these 198 colleges. If the remaining 160 colleges which do not receive grants-in-aid (other than non-Government law colleges) insist for the grants-in-aid, it was stated that the expenses will amount to only Rs. 2 crores. If the grants-in-aid is given to private law colleges, the requirement will be less than 0.1% of the total budgetary allocation for education which is not a high price for legal education. The staff of Government Law College and other Government run colleges having faculties of Arts, Science, Commerce, Engineering and Medicine draw a much higher scale of emoluments and enjoy greater benefits than what the private law colleges with their depleted resources can possibly afford to pay by way of salaries or other benefits to their staff. Out of eight law colleges in Marathwada, seven are not in a position to pay salaries according to the scale fixed by the UGC. A Dean of Faculty of Law in Marathwada University and the Principal in Dayanand College, Latur with a teaching experience of 29 long years, draw a salary of Rs. 400/- per month. As against this, Principals and staff of aided

colleges get as much as Rs. 4,000/- to Rs. 5,000/- per month with allowances and other benefits. Slowly private law colleges, one by one, face the prospect of closure. The Dayanand College of Law at Latur had closed the first and second year of LLB, Classes. Similar is the case of Jalna Law College. This is an increasing epidemic and the students will be starved of legal education and will be deprived of practising law as a profession which will cause hardship and detriment to the general public who will be deprived of legal assistance.

358. In the decision reported in 2006(5) SCC 28, *T. N. Godavarman Thirumulpad v. Union of India and Ors.*, the Hon"ble Supreme Court held that some unions have also tried to jump into the fray by filing applications seeking impleadment in these proceedings so as to contend that the allotment is of a forest land. We see no reason to allow the impleadment of parties in these proceedings. Be that as it may, we have to decide in the light of facts aforementioned, whether the land leased to Maruti is forest land or not. But before we examine the question of the nature of the land being forest or not, it is necessary to consider the bona fides of Deepak Agarwal who has approached this Court in public interest. Howsoever, a genuine cause brought before a Court by a public interest litigant may be, the Court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose bona fides and credentials are in doubt. In a given exceptional case where bona fides of a public interest litigant are in doubt, the Court may still examine the issue having regard to the serious nature of the public cause and likely public injury by appointing an amicus curiae to assist the Court but under no circumstances with the assistance of a doubtful public interest litigant. No trust can be placed by the Court on a mala fide applicant in Public Interest Litigation. These are basic issues which are required to be satisfied by every public interest litigation.

359. The Court further held that for the last few years, inflow of Public Interest Litigation has increased manifold. Considerable judicial time is spent in dealing with such cases. A person acting bona fide alone can approach the Court in public interest. Such a remedy is not open to an unscrupulous person who acts, in fact, for someone else. The liberal rule of locus standi exercised in favour of bona fide public interest litigants has immensely helped the cause of justice. Such litigants have been instrumental in drawing attention of this Court and High Courts in matters of utmost importance and in securing orders and directions for many underprivileged such as, pavement-dwellers, bonded labour, prisoners, conditions, children, sexual harassment of girls and women, cases of communal riots, innocent killings, torture, long custody in prison without trial or in the matters of environment, illegal stone quarries, illegal mining, pollution of air and water, clean fuel, hazardous and polluting industries or preservation of forest as in Godavarman case (supra). While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow their process to be abused by a mere busybody or a meddlesome interloper or

wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration, [see Janata Dal case (supra)].

360. In the decision reported in *Anand Buttons Ltd. Vs. State of Haryana and Others*, , the Hon"ble Supreme Court held that the authority is in the best position to judge which land can be exempted from the acquisition without jeopardising the development scheme. The Court cannot sit in appeal over such satisfaction by the authority vested with the task of implementing the development application.

361. It was further held by the Court that not only land but also structures on land can be acquired under the Act. As to whether in a given set of circumstances certain land should be hexempted from acquisition only for the reason that some construction had been carried out, is a matter of policy, and not of law. If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the appellants would render askew the development scheme of the industrial estate, it is not possible for the High Court or this Court to interfere with the satisfaction of the authorities concerned. We see no ground on which the appellants could have maintained that their lands should be exempted from acquisition. Even if three of the, parties had been wrongly exempted from acquisition, that gives no right to the appellants to seek similar relief.

362. In the decision reported in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , the Court held as follows at paragraph 12 of the said judgment:

12. Now what is the test of reasonableness which has to be applied in order to determine the validity of Governmental action. It is undoubtedly true, as pointed out by Patanjali Sastri, J. in *State of Madras v. V.G. Row* AIR 1952 SC 126 that in forming his own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judge participating in the decision, would play an important part, but even so, the test of reasonableness is not a wholly subjective test and its contours are fairly indicated by the Constitution. The concept of reasonableness in fact pervades the entire Constitutional scheme. The interaction of Articles 14, 19 and 21 analysed by this Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, clearly demonstrates that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of this Court show, this concept of reasonableness finds its positive manifestation and expression in the lofty ideal principles. It has been laid down by this Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, and *Maneka Gandhi case (supra)* that Article 14 strikes at arbitrariness in State action and since the principle of reasonableness and rationality, which is legally as well as philosophically an essential element of equality or non-arbitrariness, is projected by this Article, it must characterise every Governmental action, whether it be

under the authority of law or in exercise of executive power without making of law. So also the concept of reasonableness runs through the totality of Article 19 and requires that restrictions on the freedoms of the citizen, in order to be permissible, must at the best be reasonable. Similarly, Article 21 in the full plenitude of its activist magnitude as discovered by Maneka Gandhi case (supra), insists that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law and such procedure must be reasonable, fair and just. The directive principles concretise and give shape to the concept of reasonableness envisaged in Articles 14, 19 and 21 and other Articles enumerating the fundamental rights. By defining the national aims and the Constitutional goals, they set forth the standards or norms of reasonableness which must guide and animate Governmental action. Any action taken by the Government with a view to giving effect to anyone or more of the directive principles would ordinarily, subject to any Constitutional or legal inhibitions or other overriding considerations, qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a directive principle would prima facie incur the reproach of being unreasonable.

363. In the decision reported in S.P. Gupta Vs. President of India and Others, , the Hon"ble Supreme Court in the following paragraphs of the said decision held as follows:

22. We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such Constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice accelerating the pace of realization of the Constitutional objective "Law", as pointed out by Justice Krishna Iyer in Fertilizer Corporation Kamgar v. Union of India AIR 1981 SC 344 "is a social auditor and this audit action can be put into action when some one with real public interest ignites the jurisdiction... .

23. But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. Andre Rabie has warned that "political pressure groups who could not achieve their aims through the administrative process" and we might add, through the political process, "may try to use the Courts to further their aims." These are some of the dangers in Public Interest Litigation which the Court has to be careful to avoid. It is also necessary for the Court to bear in mind that there is a vital distinction between locus standi and justiciability and it is not every default on the part of the State or a public authority that is justiciable. The Court must take care to see that it does not overstep the limits of its judicial

function and trespass into areas which are reserved to the Executive and the Legislature by the Constitution, it is a fascinating exercise for the Court to deal with Public Interest Litigation because it is a new jurisprudence which demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future, are beginning to be born....

364. After analysing the facts and the submissions made before us, it appears to us that the writ petitioners challenged the said notification on the ground that it was vague, indefinite and uncertain and no effective objections can be filed u/s 5A of the said Act. Therefore, declarations made u/s 6 of the said Act is bad in law. Further, it is alleged that there was no public purpose and compensation was not paid out of public revenue. Therefore, the declarations u/s 6 of the said Act are bad, null and void and illegal. It is also submitted that the acquisition process is nothing but colourable exercise of power and is a fraud on power. The said acquisition proceeding is unreasonable, arbitrary, absurd and mala fide. The said acquisition process has been done for the company and, therefore, it has been stated that Part VII of the said Act will apply in the matter and further Rule 4 of the said rules is applicable in the matter. It is also submitted since no such rules have been followed by the authorities the whole acquisition proceedings should be set aside and/or quashed.

365. Further, it was pointed out that the notice of 15 plots of land were not included in the notification which was issued u/s 4(1) of the said Act and subsequently, the corrigendum was issued only on 8th August, 2006 and the award was published in September, 23/24, 2006 and, therefore, it was submitted that the said land owners did not get any chance to put up their effective objections in respect of the said notification.

366. On the contrary, it is submitted on behalf of the respondent authorities, and by the learned Advocate General for the State that the applications are not maintainable under the jurisdiction of Public Interest Litigation inasmuch as some of the petitioners are land owners, some are claiming to be the bargadars and some have filed their petition as a busy body to gain out of six litigations. Hence, it is submitted that the writ petitions should be dismissed.

367. It is further submitted that the notification is absolutely clear and it is not a vague one. The land is needed to be taken by the Government/Government Undertaking/development authorities at the public expense for the public purpose and it has been specifically defined by stating the employment generation and socio-economic development of the area by setting up Tata Small Car Project on the land in question.

368. Therefore, according to the learned Advocate General and other learned Senior Advocates appearing on behalf of the respondent authorities submitted that the said notification cannot be said to be vague or not for the public

purpose. It is further pointed out that after issuance of the declaration u/s 6 of the said Act, it is a conclusive proof that it is for public purpose. The learned Advocate General further pointed out that once possession has been taken, no other remedy can be taken even if all the notifications are bad in law [See State of Punjab and Another Vs. Gurdial Singh and Others,].

369. Mr. Advocate General further pointed out that there are no particulars have been given to show that the authorities issued the said notification in colourable exercise of power or there is any mala fide intention. The said petitioners did not disclose the particulars of fraud, connivance or collusion. Although it has been specifically stated that the purpose is a public purpose and for setting up of Tata's Small Car Project, he pointed out that the fact would reveal from the annual report of the Tata Motors disclosed by the writ petitioners where it has been stated that discussions were made by the State Government with Tatas for the purpose of implementation of Government policy for industrialisation. Mr. Advocate General submitted that the State made it very clear that for implementation of their policy for industrialisation they want to set up Tata's Small Car Project and WBIDC Ltd. was directed to take steps in the matter.

370. Let us examine the said notification u/s 4(1) of the said Act to find out whether it can be treated as vague, or whether the same can be said to be issued in colourable exercise of power. Admittedly, when the notification u/s 4(1) is issued, the proceedings are at the stage of enquiry and is merely an introductory in measure. It is exploratory in nature and it does not automatically result in acquisition.

371. Admittedly, in this matter on the given facts the Government after satisfying itself, wanted that the land is required for a public purpose and thereafter, issued the declaration u/s 6 of the said Act. The Collector after examining the proposal and after being satisfied that the land is needed for public purpose Pled its reports and the State Government duly accepted the said position and, therefore, the declarations u/s 6 of the said Act were issued after the relevant period.

372. It appears from the facts that the WBIDC Ltd. was the requiring body and a challenge was also thrown by the writ petitioners since it has not been specifically mentioned in the said notification who is the requiring body, then also the said notification should be declared as bad in law but, in our opinion, as suggested by the learned Advocate General due to inadvertence, it has not been struck out, particularly, specifying requiring body but it is clear from the said notification that one wing of the State authorities is the requiring body and there cannot be any doubt in the mind to accept the same. Hence, in our opinion, scoring out of a sentence or a word cannot give a right to Court to declare a notification as bad in law.

373. In these circumstances, we also accept the contention of the learned Advocate General that although some of the said plots of land were specifically

mentioned in the map but the particulars of the said land did not appear in the notification issued u/s 4(1) of the said Act and subsequently, corrigendum was issued and corrections were made. Further, 11 awardees of the said 15 plots of land-owners duly received the award money and 4 out of them filed objection before the appropriate authority and, therefore, they did not come before the Court challenging such action on the part of the State authorities, therefore, the said fact cannot give a ground to the writ petitioners to challenge the said notification on the said ground and accordingly, we accept the contention of learned Advocate General on the said ground and hold that on such ground the said acquisition process cannot vitiate.

374. The object of the notification u/s 4 of the said Act is two-fold, viz., i) to intimate the landowner or the occupier of the land and the intention of the officer to enter upon the land and, ii) to enable to file objection, if any, against proposed acquisition. It is true that there cannot be any acquisition of land without issuing a notification u/s 4(1) of the said Act.

375. The Calcutta High Court in the case of Banku Behari Dutt Vs. State of West Bengal, , observed that even though in the notification u/s 4 of the said Act the land notified to be described vaguely but it is properly specified in the plan annexed, then notification cannot be held to suffer their vagueness.

376. The Hon"ble Supreme Court in the case of Raghunath and Others Vs. State of Maharashtra and Others, , held that when the land was needed for public purpose such as, plan development of an area and it was not possible to give the exact details of the purpose of acquisition but the plan was available for inspection at the office of Collector, notification u/s 4 cannot be challenged on the ground of vagueness or indefiniteness.

377. The notification also cannot be struck down on the ground that it is vague since it is not absolutely necessary for the validity of the notification that the statement "public purpose" should find its place in the notification and even such a defect is not fatal for the validity of the proceedings.

378. The Hon"ble Supreme Court also held that when the acquisition of land is for plan development of a city, framing of the scheme under T.N. Housing Board Act is not a precondition for publication of the notification u/s 4 of the said Act and hence, the notification cannot be treated to be vague on that ground [See State of T.N. and Others Vs. L. Krishnan and Others,].

379. In the decision of S. Gurdial Singh and others Vs. Ludhiana Improvement Trust, , the Hon"ble Supreme Court reiterated the said principle laid down in L. N. Krishnan's case (supra). Even omission to give particulars of land with reference of Khasta No. cannot make the notification number invalid [See Ashwani Kumar Dhingra Vs. State of Punjab,].

380. Therefore, in our opinion, if the notification clearly specifies that the land is required for the setting up of the said Tata's Small Car Project then it cannot be

said that the said notification u/s 4 is vague.

381. Accordingly, we hold that the said notification is valid. Now, we have to consider whether the said notification has been issued in colourable exercise of power.

382. In the decision of Bajirao T. Kote (Dead) by Lrs. and Another Vs. State of Maharashtra and Others, , the Hon"ble Supreme Court has made it very much clear that when the State Government exercises its power u/s 4(1) of the said Act for a public purpose and the public purpose was mentioned therein, exercise of powers cannot be invalidated on the grounds of mala fides or colourable exercise of power so long as the public purpose is shown and the land is needed or is likely to be needed and the purpose subsisting at the time of exercise of power. It is also pointed out that it is primarily for the State Government to decide whether there exists public purpose or not. It is not for the Courts to evaluate evidence and give its own conclusion that it is mala fide or colourable exercise of power, that is, the exercise of power have no public purpose or it serves private, public. In the said decision, the Public Trust Saibaba Sangsthan needed land for connecting the temples by a road through land occupied by a house, sought to be acquired. The Saibaba Temple is run by a public trust, maintaining the temple and other temples at Sirdih and also the Dharamsalas, the prayer hall etc. Thousands of pilgrims daily visit the said temple to pay their homage and seek blessings of the mystic secular Sri Saibaba. Hence, the Court held that it cannot be said that providing public access to the temples is not a public purpose and the exercise of power cannot be held to be colourable or mala fide.

383. In the decision of Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others, , the Hon"ble Supreme Court observed that once a public purpose has been specified, by the Government in the notification such specification is obviously on satisfaction thereof of the Hon"ble Governor. On such satisfaction, the Governor issues the notification, the absence of specification and further reproduction of the development do not have the effect of rendering the satisfaction of the Governor illegal or the notification u/s 4(1) of the said Act published by the Government in exercise of power of eminent domain is not rendered void.

384. The Hon"ble Supreme Court also held in the decision of Commissioner of Income Tax, Bombay Vs. M/s. Banque Nationale De-Paris, , that when the acquisition of land was for public purpose of setting up the Technology Park and to meet the need of additional land contiguous to the area acquired earlier, it cannot be challenged as mala fide only because the dispute was raised by the appellant to the right of way claimed for use of earlier acquired land of the appellant.

385. The Hon"ble Supreme Court in the decisions of Madhusudan Chhotalal Patel and anr Vs. Special Land Acquisition Officer and ors, and Kanhaialal v. State of

Gujarat reported in AIR 1979 SC 118, held that only because in the notification u/s 4 or declaration u/s 6 the authority has failed to specify the instrumentality of the State which has to execute the public purpose for which the land is acquired does not affect the validity of the notification either u/s 4 or u/s 6 of the said Act.

386. In the decision of *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, , it has been held by the Court that the acquisition of land for "development and utilisation of land as industrial and residential area" is a public purpose.

387. It further appears to us that u/s 6 of the Act, the Court would only try to find out whether such acquisition would serve to enhance the welfare of the community or an area and that has to be treated as for a public purpose. The onus to prove mala fide or colourable exercise of power is upon the person who make such allegation. In the instant case, as it appears that the State Government has adopted a policy for industrialisation for the socio-economic development of the said area and further for the generation of employment, it cannot be said on the given facts that the said notification has been issued mala fide or in colourable exercise of power.

388. Hence, we hold that the said notification and the said declaration also cannot be questioned or can be declared as bad in law on the ground of mala fide or can be treated the same as colourable exercise of power since and in our opinion, the writ petitioners also could not discharge their onus to prove such mala fide or colourable exercise of power (see *L A. Collector v. Durga Prasad Mukherjee* reported in AIR 1980 SC 1679).

389. The third vital question which has been raised by all the learned Senior Counsel appearing on behalf of the writ petitioners that the State authorities without following the Rules of 1963 or the Part VII of the said Act are trying to hand over the land to a company without following the proper norms, and in support of their plea, the learned Senior Counsel relied upon a decision reported in AIR 2007 SCW 6692 (*Devinder Singh and Ors. v. State of Punjab and Ors.*) and submitted that in the said decision the Court held that since there is no compliance of Rule 4 and if Rule 4 has not been complied with the exercise of jurisdiction under Part VII, must be held to have been erroneous.

390. It has been specifically stated in the Act itself that in a case of acquisition for a public company, public purpose is not to be assumed and the points of distinction between the acquisition of land under Part II and Part VII is totally different, details with the source of fund to cover the cost of acquisition.

391. On the other hand, the learned Advocate General appearing on behalf of the State duly pointed out before us that in the said decision it has to be seen that the company requested the State to acquire the lands in question in terms of the provisions of the said Act and furthermore, admittedly, there was an agreement entered into between the State Government and the said company. He also pointed out in the instant case, the company never applied before the State

Government or entered into any agreement with the State Government at any point of time expressing their willingness to have the said land.

392. On the contrary, the State Government for the purpose of industrialisation policy, took a step to bring the said company for socio-economic development of the said area and accordingly he pointed out that the said decision has no manner of application on the given facts.

393. We have considered the said decision of Devinder Singh (supra). From the facts of the said decision, it appears that the company intended to set up a project named "Ganesh Project". The company requested the State to acquire lands. The Court held that there has been no compliance of Rule 4. If Rule 4 has not been complied with, the exercise of jurisdiction under Part VII held to be erroneous. The Court also held that an acquisition for a company may be made for a public purpose within the meaning of the Act, if a part or the whole of the cost of acquisition is paid out of the public funds. On the other hand the acquisition for a company is to be made at the cost entirely of the company itself, such an acquisition comes under the provisions of Part VII.

394. Therefore, in our opinion, the said decision cannot be a help to the writ petitioners, since the acquisition in this case is not at the instance of the company but at the instance of one wing of the State authorities. Hence, we are of the opinion that the said argument of learned Counsel on behalf of the writ petitioners cannot have any bearings on the given facts of this case. The State for the purpose of implementation of its policy through the requiring body took steps in this matter and at the instance of the State, the said Tata's Small Car Project tried to be set up. Therefore, in our opinion, there is no violation of the provision of the said Act. We also hold that Land Manual is nothing but only a guideline and it cannot have overriding effect over the statute.

395. We also hold that the money which has been paid by the WBIDC Ltd. also can be equated with the public revenue in terms of the said Act of 1894. The law has already been settled in the cases of S.K. Patel (supra) and Pratibha Nema (supra) that a compensation is payable out of the public revenue which includes the fund of local authority or the fund of a Corporation owned or controlled by the State. However, it was laid down in the case of Somawanti (supra) that the notification u/s 6(1) of the said Act did not exclusively constitute the fact that the Government had decided to make payment at the expense of the acquisition or even to state that the Government is prepared to make a part of the contribution to the cost of acquisition, it has also been held by the Constitution Bench that a contribution to be made by the State, need not be substantial even a token contribution of Rs. 100 which was made in that case specifying the requirements by the proviso to Section 6(1) of the said Act the same approach was adopted in the case of Jageram v. State of Haryana (supra) as well as in the case of Manubhai Jehtalal Patel (supra).

396. In the case of Kashi Vidyapith v. Motilal (supra) the Hon''ble Supreme Court

has observed that the State has financial control over the university and though the expenditure has to be made by the university, the fund came from the contribution made by the various authorities under the circumstances which is a local fund. It is also pointed out that once it is held that Kashi Vidyapith was duly constituted as deemed university, then the very object of the establishment of the university, that is, for imparting higher education to the students, cannot be achieved without buildings for the staff. Student hostel, play ground etc. and the Hon"ble Supreme Court held that the acquisition process is for a public purpose.

397. The Hon"ble Supreme Court has, thereafter, considered the definition of local authority has been defined under the General Clauses Act which is an inclusive definition and which includes "any other authority" and has held that the university must be constituted to be any other authority within the meaning of Section 3(31) of the General Clauses Act, defining local authority.

The university fund is a local fund within the meaning of Section 3(1) of the General Clauses Act. Therefore, it is not necessary for the State Government to contribute from the exchequer towards the cost of acquisition of the property. The Hon"ble Supreme Court further held that the procedure prescribed under Part VII of the Act need not be followed.

398. Hence, following the said tests as laid down in the said decision we hold that the State has financial control over the WBIDC Ltd. Furthermore, the said company was incorporated to implement the policy of industrialisation in the State and, therefore, the very object of the establishment of WBIDC Ltd. fulfills the said Test.

399. Therefore, we hold that the fund of the WBIDC Ltd. can be equated with local fund and payment made out of the said fund towards the cost of acquisition of the land is nothing but a payment from the exchequer. We also hold that after taking loan from the West Bengal Financial Corporation and the payment has been made by WBIDC Ltd. cannot be a ground to declare the acquisition as bad. Accordingly, we hold that the procedure under Part VII of the said Act need not be followed.

400. Hence, we are of the opinion that the objections raised on behalf of the petitioners is not at all tenable as the respondent authorities in the notification issued u/s 4 as well as the declaration u/s 6 of the Act have made it clear that the land is needed by the Government for a public purpose, that is, for setting up of Tata Small Car Project for socio-economic development of the area and the employment generation and so it cannot be urged under any stretch of imagination that the respondent authorities are seeking to acquire the land in question for the company.

401. We also find that the writ petitioners could not furnish any particulars in respect of the allegations made in the petition such as fraud, collusion etc. and those cannot be entertained for devoid of particulars. Furthermore, the onus heavily lies on the petitioners and we hold that the petitioners have failed to

discharge the same.

402. We also cannot brush aside the facts that substantial amounts have already been paid by way of compensation to the most of the land owners at the said area. We also hold that the case of the public purpose has been substantiated before us by the learned Advocate General. Therefore, in the backdrop of the said facts, we also do not find any reason to set aside the said acquisition process.

403. Some of the petitioners claiming themselves to be the bargadars have moved the writ petition with a prayer to declare that their right to barga cultivation as bargadar defined u/s 2(2) of the West Bengal Land Reforms Act, 1955, cannot be acquired under the provisions of the said Act. According to them, such acquisition amounts to termination u/s 17 of the West Bengal Land Reforms Act, 1955. The status of the petitioners under the Land Reforms Act is not liable to be interfered with by way of acquisition process under the said Act of 1894.

404. We have considered the said question wherefrom it appears to us that u/s 3(a) of the said Act, the rights of the bargadars are also included. If the petitioners are claiming to cultivate as bargadar, they would come within the purview of Section 4 of the Land Reforms Act. The land of Raiyat who owns the land. Therefore, the notice under the said Act required to be served on the land owners.

405. It further appears from the fact that the award has been made, in respect of the recorded bargadars u/s 23 of the said Act as it stands amended. The nature of calculation has also been provided by the West Bengal Amendment to Section 24A of the said Act by introducing Sub-section (3) by the West Bengal Amendment of Section 24A of the said Act. The bargadars, therefore, have no locus standi to challenge the acquisition and it further appears that the award has already been made in respect of the recorded bargadar.

Accordingly, we hold that the said petitioners shall have the liberty to approach the Collector in accordance with the provisions of law.

406. We have not decided the question of locus standi of the petitioners since we grant the liberty to the parties and have heard them extensively and we have also dealt with the applications filed by them on merits.

For the reasons stated hereinabove and the discussions held by us in the preceding paragraphs; we dismiss these writ petitions.

S.S. Nijjar, C.J.

I agree.

Later:

407. Let plain copy of the ordering portion of this judgment duly countersigned

by Assistant Registrar (Court), be given to the respective parties on the usual undertakings.