
(2011) 10 CHH CK 0030
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1075 of 2011

Khilleshwar Prasad Jaiswal

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 11-10-2011

Acts Referred:

Companies Act, 1956 — Section 40(1)
Land Acquisition Act, 1894 — Section 3, 4, 4(1), 40, 41

Citation : (2012) 1 CGLJ 611

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Sanjay Kumar, Mr. Shashank Thakur and Mr. Manoj Jaiswal, for the Appellant; Kishore Bhaduri, Additional Advocate General with Mr. Satish Gupta, Govt. Advocate, for State of Chhattisgarh and Authorities of the State, Mr. P.S. Koshy and Mr. Kasif Shakeel, Advocates, for Chhattisgarh State Industrial Development Corporation, Mr. Sachin Singh Rajput, Advocate, for Union of India, Mr. V.V.S. Murthy with Mr. Pankaj Shrivastava, Advocate for Chhattisgarh Environment Conservation Board and Mr. Challa Kodanda Ram and Dr. N.K. Shukla with Mr. K.V. Shiva Prasad, Shailendra Shukla and Mr. Ravindra Nath Reddy, Advocates, for M/s Athena Chhattisgarh Power Pvt. Ltd., for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Sunil Kumar Sinha, J.—Since common questions of facts and law are involved in these writ petitions, I have heard them together, and they are being disposed of by this common judgment. The acquisition of 392.99 acres of land situated at village Singhitarai. PC No. 01, Tehsil Dabhra, District Janjgir-Champa (C.G.), belonging to the petitioners and other agriculturists vide Land Acquisition Case No. 04/A/82/2009-10, has been challenged in these writ petitions. The petitioners have prayed for quashing of the notifications issued u/ ss 4 & 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the "L.A. Act") and have also prayed for quashing the award dated 22.2.2011.

2. Collector, Janjgir-Champa issued a notification u/s 4(1) of the L.A. Act on 1.6.2010 for acquisition of private lands situated at village Singhitarai, Tehsil Dabhra, District Janjgir-Champa (C.G.). The land owners/villagers, whose lands were proposed to be acquired, filed detail objections jointly before the Sub-Divisional Officer - Cum - Land Acquisition Officer, Dabhra on 30.6.2010 in above Land Acquisition Case No. 04/A/82/2009-10. The General Manager District Industries & Trade Centre filed reply before the Land Acquisition Officer. The Land Acquisition Officer recorded statements of villagers/land owners on 31.7.2010. The Land Acquisition Officer after hearing objections of the parties decided the same u/s 5-A and rejected those objections. Thereafter the matter was forwarded to the Collector for further proceedings u/s 6. The Collector issued notification u/s 6 of the L.A. Act on 15.9.2010. On 4.10.2010 objections were filed and after compliance of Section 9 of the Act, award was passed on 22.2.2011 which was further approved by the Commissioner on 24.2.2011.

3. Learned counsel for the petitioners have contended that the lands have been acquired by the Government at the instance of M/s Athena Chhattisgarh Power Pvt. Ltd. (hereinafter referred to as the "respondent-Company") and as such the procedure prescribed under Part VII of the L.A. Act was to be complied with; the entire money for compensation has been contributed by Company and the acquisition being at the behest of the Company was not for public purpose. They have also contended that the notification issued u/s 4(1) of the L.A. Act was vague as there was no description of khasra numbers in the said notification and the same, thus was non est, therefore, the entire proceeding of Land Acquisition vitiated.

4. Per contra, learned counsel for the respondents have contended that the State Government has acquired the lands for public purpose; the compensation is being paid from the public fund; the acquired lands were agreed to be given on lease to the respondent-Company in terms of the notified policy of the Government after collection of necessary lease premium and service charges; the Government, under the industrial policy, had acquired the lands and handed over to Chhattisgarh State Industrial Development Corporation (CSIDC) and CSIDC in turn as a lessor has executed a lease deed in favour of respondent-Company; the said transaction of lease is subject to certain rights to enjoy the land on certain conditions by the Company for specific purpose and there is no transfer of the ownership of the lands in favour of the respondent-Company; the ownership of the lands continue with the Government/CSIDC; and thus, the acquisition was not for the Company. The acquisition was made by the Government to facilitate the establishment of a 2 x 600 MW Thermal Power Project at the cost of Rs. 6200.00 crores and keeping in view the benefits arising out of the Projects, at best it can be said that the land acquisition proceedings were for public purpose falling within the scope of Section 3(f) of the L.A. Act. They have contended that the Government has acted under Industrial Policies 2004-2009 and 2009-2014 and has taken the Thermal Power Plant as core sector industry and acquired the lands for above public purpose. About the

contents of notification u/s 4(1), learned counsel for the respondents have contended that the description in the notification was sufficient to identify the lands; the petitioners had full knowledge about proposed acquisition of their lands as they have participated in the proceedings of Section 5; the petitioners have belatedly challenged the validity of above notification; the contents of the notification have not at all prejudiced the rights of the petitioners for want of knowledge. They have further contended that the petitioners have not made any allegations of mala fide, therefore, the above ground raised by the petitioners cannot succeed.

5. I have heard learned counsel for the parties at length and have also perused the records of the writ petitions.

6. Firstly, I shall consider as to whether the acquisition was mala fide and in colorable exercise of power to give undue benefit to the respondent-Company; there was no public purpose, and whether it was required to be undertaken in conformity with the provisions of Part VII of the L.A. Act?

7. There are two Industrial Policies of the State. One 2004-2009 policy and the other 2009-2014 policy. According to the first policy, Clause 4.2.3, the State Government took a decision that development of private industrial areas will be encouraged. Further by Clause 4.2.8 it was decided that for setting up industries particularly large and mega industrial units, outside the industrial areas and parks, government revenue land and private land will be acquired and made available to investors through Chhattisgarh State Industrial Development Corporation. Vide Clause 4.4.4, on the basis of size of investment, industries were classified in the following four categories:-

(i) Small scale industries - As defined by the Government of India from time to time;

(ii) Medium-Large industries - Industries with total capital investment up to Rs. 100 crore except the small scale industries;

(iii) Mega projects - Large industries with total capital investment between Rs. 100 crore and Rs. 1000 crore; and

(iv) Very large industries with total capital investment of over Rs. 1000 crore.

The Government further decided vide Clause 4.5.3 that private sector participation in infrastructure building will be encouraged, particularly in the following areas:-

(i) Basic infrastructure like roads, power, water supply, housing;

(ii) Industrial infrastructure such as development of industrial areas and parks, cluster development;

(iii) Logistics infrastructure like air-cargo complex, inland container depot, ware housing, logistics hub; and

(iv) Social infrastructure like health, education, tourism.

The definitions of "Medium/Large Industrial Unit" and "Mega Project" are mentioned in Annexure-1 to the policy. According to the definition, "Mega Project" means an industrial unit, which has fixed capital investment of more than Rupees 100 crore, has obtained, as the case may be, industrial entrepreneur memorandum certificate, industrial license or letter of intent from Government of India and holds a production certificate issued by State's Directorate of Industries, in the said policy Annexure-2 is the negative list of industries units ineligible for exemption/concession which consist of 33 industries, but the power or power generation has not been included in Annexure-2 negative list. Annexure-4 to the policy provides for exemption/concession for promotion of industrial investment and among the various exemptions, exemption from payment of stamp duty has also been provided vide Clause 4 of Annexure-4. The second policy i.e. Industrial Policy 2009-2014, which came into existence on 1st November, 2009, is further more elaborate. Strategy vide Clause 3.6 shows the intention of the Government to empower the industrial development at district as well as state level for facilitating large scale land acquisition for making provisions for reserved plot and for establishing in new area industrial state. For industrial infrastructure the Government has further decided vide Clause 4.2.3 for facilitating the acquisition of the land for industrial purpose and safeguarding the interests of land owning families. Specific facilities such as stamp fee for purchasing agricultural land up to the amount of compensation and priority in establishing industry in industrial areas was also decided to be provided. It was further decided that it shall be the priority of the government to give compensation to the land acquisition affected families. In case of land acquisition/direct purchase of land for industrial purpose, such provisions shall be made as the land owner could get suitable compensation. The Government further decided that for the purpose of industrial investment incentive, the State shall be categorized into economically developing and economically backward areas and for the purpose of volume of investment, the industries would be classified in the following five categories:-

- (1) Micro and small industries
- (2) Medium industries
- (3) Large industries
- (4) Mega projects and
- (5) Ultra-mega projects

In the second policy, core sector industries have also been defined and classified in Annexure-5 and a Thermal Power Plant has been taken as a core sector industry. List of economically developing areas for industrial investment encouragement is also annexed to this policy and block-Dabhra of District Janjgir-Champa, where the proposed power plant is to be established is one of such

areas.

8. In background of the above two policies, the private respondent/M/s Athena Chhattisgarh Power Pvt. Ltd. filed an application on 29th October, 2008 before the State Investment Promotion Board (for short "SIPB") to initiate the process of land acquisition. The company made a request for 895.45 acres private land and 75.47 acres of Government land. The SIPB, forwarded the proposal of the company to the Commissioner Industries vide memo dated 24.11.2008 which contains the details of lands of different villages total amounting to 895.45 acres of private lands and 75.47 acres of Government lands. A village-wise detail contained in forwarding memo of SIPB is as follows:-

The present petitions are in relation to the lands falling in village Singhitarai in which the company had prayed for allotment of 37.71 acres of Government land also in addition to the 405.53 acres of private land. It is on the above proposal for allotment of the lands to the private respondent on their application in the prescribed manner, the appropriate authority of the Government issued a notification u/s 4 (1) of the L.A. Act on 1.6.2010. In the meanwhile an amount of advance premium of Rs.79.91 crores was deposited by the company with the CSIDC for the said lands. Prior to all this a memorandum of understanding (MOU) was entered into between the State Government and the private respondent on 7th January, 2008 which provided that the Government, through the SIPB will facilitate expeditious grant of permission, approval, No-Objection Certificate, for recommendation etc. under the purview of the State Government and the company shall be responsible to obtain all statutory clearance, approvals relating to foreign Direct Investment (FDI), if any, as per law. Further on 1st August 2009 the implementation agreement was also entered into and MOU dated 7.1.2008 was released thereby. Clause 4.2.3 of implementation agreement is important for the purpose of deciding the point raised. This Clause deals with acquisition and transfer of lands. It provides that the Company shall at its own cost and expense, identify the land required for the Project and the Government will assist in acquisition of private lands as may be required by the Company for construction, operation and maintenance of the Project (acquired Land). The Company shall also be allowed to acquire such land through direct negotiations with the owners in accordance with the prevailing laws, rules and regulations in the State. In case the land is owned by the Government, it will be leased out to the Company as per the Applicable Laws and policies. However, all the preliminary work to effect such lease shall be done by the Company at its own cost. The State "has come with a definite return. It has contended that the acquisition is already over and award has been passed and after passing of the award the compensation amount is being distributed to the land oustees and about 16 crores have already been distributed to more than 114 land oustees till the date of filing of the return i.e. 2nd May 2011. The State has also contended that the possession of the entire subject lands has been taken by the State and the State became the owner of the lands on account of acquisition. The State has further contended in Para-19 of the return that after passing of the award the

lands have vested in the State and ownership of the land is transferred from the land oustees to the State Government, and even in future, the State will remain the owner of the lands acquired. However, the lands which are acquired and shall remain under the ownership of the State, may be allotted/leased out to the industrial units which deserve it as per the State Industrial Policy.

9. Learned counsel for the petitioners have argued that since entire amount of compensation appears to have been contributed by the private respondent, therefore, it was an acquisition for the private respondent and the procedure laid down under Part VII of the L.A. Act was to be followed. They have strongly relied on the decision of this Court in *Gaukaran Singh Vs. State of C.G. & Others* 2008 (3) CGLJ 163. They have also referred to various other decisions which are mentioned in the above judgment of this Court.

10. In *Gaukaran Singh* 2008 (3) CGLJ 163 (supra), the land was proposed to be acquired for Lafarge India Pvt. Limited who wanted to establish a rail link between their Sonadih plant and Nipaniya railway station at their own expenses. When a notification u/s 4 (1) of the L.A. Act was issued, it was challenged before the High Court on the following grounds which are contained in Para-6 of the judgment:-

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

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

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

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

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

The co-ordinate Bench of this Court, relying on two decisions namely *Pandit Jhandu Lal and Others Vs. The State of Punjab and Others*, and *Pratibha Nema and Others Vs. State of M.P. and Others*, , held vide Para 26 as under:-

26. In the instant case, also construction of rail link from railway siding to the factory premises at the request of a private company at its own expenses can by no stretch of imagination fall within the well accepted meaning of "public purpose". Therefore, in the considered opinion of this Court the acquisition proceeding in the instant case would be governed by Part-VII and not by Part-11 of the Act, 1894.

11. The judgment of this Court was mainly based on the observations made by the Supreme Court in *Pratibha Nema and Others Vs. State of M.P. and Others*, vide Para 22 that:-

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

12. The above judgment is distinguishable on facts. In the said case, the company wanted to construct a private rail line on their own cost. The judgment is on the premises that no cost at all was to be paid by the Government and thus, no public purpose appears to be there. In the present case there are no allegations that the entire amount of compensation whatever has accrued till date and what will accrue in future all shall be deposited by company and the Government will do nothing. Secondly since it was challenged at the stage of issuance of notice u/s 4(1), therefore, though there are many distinguishable facts in the said case and in the present case but this Court was having no occasion to address on those issues which I shall take up later on.

13. In *Prem Bai Vs. The State of MP. and others* AIR 1976 Madhya Pradesh 35, a Division Bench of M.P. High Court held that when the State Government after acquiring lands for establishing industries gives them to a company for setting up a factory and the responsibility for paying compensation is with the State Government it is clear that the ownership of the lands is with the State Government and the company is only a lessee. Therefore, the acquisition cannot be challenged on the ground of non-compliance with Part VII of the L.A. Act.

14. In *Gajanand and Others Vs. State of M.P. and Others*, it was held that "Where a land was acquired for setting up a "diamond park" and the land was to be vested in Govt, and transferred to M.P. Audyogik Kendra Vikas Nigam for allotment to prospective entrepreneurs, and a private Company applied for setting up of such unit, the acquisition cannot be challenged on ground that it was colourable exercise of power with a view to benefit the private Company". This judgment came for consideration before the Supreme Court in *Pratibha Nema and Others Vs. State of M.P. and Others*, The observations made in *Pratibha Nema*, Para-22, have been quoted in *Gaukaran Singh* 2008 (3) CGLJ 163 (supra). Over and above, in *Pratibha Nema*, the Supreme Court held vide

Para-25 that "it seems to be fairly clear, as contended by the learned counsel for the appellants, that the amount paid by the Company was utilized towards payment of a part of interim compensation amount determined by the Land Acquisition Officer on 7-6-1996 and in the absence of this amount, the Nigam was not having sufficient cash balance to make such payment. We may even go to the extent of inferring that in all probability, the Nigam would have advised or persuaded the Company to make advance payment towards lease amount as per the terms of the MOU on a rough-and-ready basis, so that the said amount could be utilized by the Nigam for making payment on account of interim compensation. Therefore, it could have been within the contemplation of both the parties that the amount paid by the Company will go towards the discharge of the obligation of the Nigam to make payment towards interim compensation. Even then, it does not in any way support the appellants' stand that the compensation amount had not come out of public revenues. Once the amount paid towards advance lease premium, may be on a rough-and-ready basis, is credited to the account of the Nigam, obviously, it becomes the fund of the Nigam. Such fund, when utilized for the purpose of payment of compensation, wholly or in part, satisfies the requirements of the second proviso to Section 6(1) read with Explanation 2. The genesis of the fund is not the determinative factor, but its ownership in present that matters."

15. From all the above judgments, it is clear that once amount is paid to the Government body, which is CSIDC here, and is credited in its account, it becomes the fund of that body and if such fund is utilized for the purpose of payment of compensation, wholly or in part, that satisfies the requirements of Section 6 (1) read with Explanation 2, because, the principle which in fact is laid down in *Pratibha Nema and Others Vs. State of M.P. and Others*, is that the genesis of the fund is not the determinative factor, but its ownership in present that matters.

16. In *Nand Kishore Gupta and Others Vs. State of U.P. and Others*, the Supreme Court taking note of *Pratibha Nemc* (2003) 10 SCC 626 (supra), held that "The contention raised on the basis of stipulations in the Concession Agreement that the Company has paid the compensation cost and, therefore, the acquisition is clearly covered under Part VII of the Act, is clearly incorrect. If it is presumed that the compensation is coming from the Company, then it will have to be held that the whole assets would go to the Company. At least that is envisaged in Part VII of the Act. Here, that is not the case. The Company gets no proprietary or ownership rights over the Project assets. The assets are to revert back to the acquiring body or, as the case may be, the Government. Even the lands which are utilized for the construction of the Expressway are to go back to the Government barely after 36 years i.e. after the Company has utilized its rights to recover the toll on the Expressway. The Agreement provides that the land would be leased on a premium equivalent to the acquisition cost. Through the Concession Agreement, only the extent of the compensation payable by the Company to YEIDA, was decided. However, once all the amounts went to the

coffers of YEIDA, it would lose its independent character as a premium. When it goes into the coffers of YEIDA, it is YEIDA which would make the payments of the estimated compensation and thereby it would be as if the compensation is paid not by the Company, but by YEIDA."

17. In case on hand, the lands are not to be transferred in the absolute ownership of the company, but the lands are to be leased out to the company for certain period on certain conditions. That is to say that the respondent-company will never be the absolute owner of the acquired lands and the ownership of the lands shall be with the Government or the lessor. Section 41 of the L.A. Act falling in Part VII deals with the Agreement with appropriate Government, it talks about the transfer of the land to the company. Section 44A restricts further transfer and says that no company for which any land is acquired under this part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government. This gives a clear indication relating to the ownership of the land which in case of an acquisition under Part VII will go to the company, though the company would be under certain obligations for further transfer. In case on hand, there is no question of absolute transfer and the ownership shall always vest with the State Government / CSIDC and the private respondent will only have a lease hold right. Therefore, on this account present cannot be held to be an acquisition in which procedure under Part VII of the L.A. Act was required to be followed and only on account of payment of certain amount towards advance premium it cannot be held that the acquisition was a colourable exercise of power by the Government.

18. Besides the above, provisions of Section 44B are also to be kept in mind. Section 44B begins with a non-obstinate Clause and provides that Notwithstanding anything contained in this Act, no land shall be acquired under this part, except for the purpose mentioned in clause (a) of sub-section (1) of Section 40, for a private company which is not a Government company. The Explanation further provides that "Private Company" and "Government Company" shall have the meanings respectively assigned to them in the Companies Act, 1956. Clause (a) of Section 40 (1) says that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provisions of amenities directly connected therewith. In *Gaukaran Singh 2008 (3) CGLJ 163 (supra)*, there was no occasion to address all these points, as challenge in the said case was made at the preliminary stage of issuance of Section 4 (1) notification. The judgment of *Gaukaran Singh 2008 (3) CGLJ 163*, therefore, is distinguishable on facts and in light of various judgments of the Supreme Court and the same is not helpful to the petitioners. On due consideration of the entire facts and circumstances of the case, I am of the view that merely on account of the deposit of above amount of advance premium by respondent-company it cannot be held that a procedure prescribed under Part VII was required to be followed.

19. It was next argued that there was no public purpose. The expression public purpose includes the provisions of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or/outright sale with the object of securing further development as planned. In the instant case, in notification u/s 4(1), it has been shown that the lands are being acquired for industrial purpose which in fact is for the purpose to facilitate setting up of a 2 X 600 MW Thermal Power Project at the cost of Rs. 6200.00 crores. The Thermal Power Plant, proposed to be set up for generating power, according to the industrial policy, is a core sector industry. It falls in the locality of economically developing area for industrial encouragement specifically contained in the policy. It is not a case that the entire power generated from the plant would be sold in the free market by the company. I have been told that many impediments are there and interest of public at large in utilization of the power has been taken care of by the Government. Steps taken by the Government for industrial development of the State within the purview of the industrial policy and subject to the Law in force is always permissible. Power is backbone of the industries. If the Government has taken steps for encouragement of power generation by giving certain incentives to the private company keeping itself well within the norms of Land Acquisition Act and their policy, it cannot be said on a bald statement that the public purpose element is being frustrated. In *Pratibha Nema and Others Vs. State of M.P. and Others*, , it was observed that "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, coordination 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." In the instant case except the bald statement that there was no public purpose nothing has been brought on record to substantiate the same. Power generation and its supply with the conditions of subsidized rates in certain circumstances, in my opinion, is sufficient to show existence of public purpose.

20. In *Bajirao T. Kote (Dead) by Lrs. and Another Vs. State of Maharashtra and Others*, the Supreme Court held that "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 colorable 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 the Supreme Court or 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 colourable exercise of the power, that is, the exercise of the power serves no public purpose or it serves a private purpose."

21. In *Smt Somawanti and others Vs. The State of Punjab and others* AIR 1963 151, which is also referred to in *Gajanand and Others Vs. State of M.P. and Others*, , the Constitution Bench of the Supreme Court, per majority, held that "Public purpose is bound to vary with the times and the prevailing conditions in a given locality and, therefore, it would not be a practical proposition even to attempt a comprehensive 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. It was held that whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the legislative competence of the State, the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colorable exercise of powers, the declaration will be open to challenge at the instance of the aggrieved party. If it appears that what the Government is satisfied about is not a public purpose at all the action of the Government would be colorable as not being reliable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government will be final." The Constitution Bench, therefore, upheld the notification when it was mentioned that the public purpose was for industrial development without any specification. Applying the above settled principles if we examine the notification and test the public purpose, in absence of any other material contrary to it, especially to show it as colorable exercise of power, the purpose for proposed acquisition appears to be a public purpose.

22. Now I shall consider the validity of notification u/s 4 (I). It was argued by learned counsel for the petitioners that the notification is vague and descriptions in the notification are not proper. They have mainly argued that khasra numbers were not mentioned in the notification, therefore, the notification itself requires to be quashed. They have placed their reliance on *Narendrajit Singh and Another Vs. The State of U.P. and Another* 1970(I) SCC 125, *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others* (1992) 2 SCC 168 & *Om Prakash Sharma and Others Vs. M.P. Audyogik Kendra Vikas Nigam and Others* (2005) 10 SCC 306.

23. In *Narendrajit Singh and Another Vs. The State of U.P. and Another*, , the Supreme Court considered that the notification suffers from a very serious defect in that the locality where the lands were needed was not specified. The defect in

a notification u/s 4 (1) cannot be cured by giving full particulars in the notification u/s 6 (1). It was held vide Para-8, which is important for us, that Section 4(1) does not require that the identity of the lands which may ultimately be acquired should be specified but it enjoins upon the Government the duty to specify the locality in which the land is needed. In that case the notification suffered from a serious defect as the locality where the lands were needed was not specified.

24. Further, in *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others*, case, relying on *Narendrajit Singh and Another Vs. The State of U.P. and Another*, it was held that the non-disclosure of the "locality" with precision, invalidates the notification and renders the publication of notice a meaningless formality.

25. The above two judgments were taken note of in *Om Prakash Sharma (2005) 10 SCC 306 (supra)* and the defect of non-mention of the locality, where the proposed lands were situated, in the notification was held to be a serious defect.

26. Learned counsel for the respondents have argued that there is no defect in notice u/s 4 (1). I have gone through the notice. The locality has been clearly mentioned in the notice which contains the name of village, PC number, Tehsil and District. The area of the lands have also been specifically mentioned with the purpose of acquisition. The area proposed is about 401.42 acres. The purpose of a notification u/s 4 (1) is to carry on a preliminary investigation with a view to find out after necessary survey and 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. This is what the Supreme Court said in *Babu Barkya Thakur Vs. The State of Bombay and Others*, . It was held that it is only u/s 6 that a firm declaration has to be made by the 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 proceeding for acquisition under the Act. In the instant case, maximum lands of the village were proposed to be acquired. Locality, in the present case, at the best would have been the name of the village in the above facts and circumstances of the case, which has been clearly mentioned in the notification u/s 4 (1), Moreover, the petitioners have not seriously stressed on locality point but they have stressed upon non-mentioning of khasra numbers which has not been held to be a requirement of S. 4 (1) in *Narendrajit Singh and Another Vs. The State of U.P. and Another*, . As far as locality is concerned, the three cases cited above are distinguishable on the point that in *Narendrajit Singh and Another Vs. The State of U.P. and Another*, nothing at all was mentioned in the schedule of notice. In *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others*, only name of city Mandsaur was mentioned with the particulars of land as 2.29 hectares. Mandsaur is a big city and where does this 2.29 hectares lies, nobody can identify unless locality of the same was given. Like wise in third case also i.e. *Om Prakash Sharma (2005) 10 SCC 306 (supra)* localities of the lands were not there and areas of the lands in 3 different villages were small areas, i.e.

35.828 hectares, 39.708 hectares and 39.708 hectares which may have been difficult for identification. It is on these accounts the notifications were held to be bad. But this is not the situation in case on hand. It may be noted that in the present case, after the notification, the villagers, through Sarpanch, represented the matter before the Land Acquisition Officer by filing their objections, but they never raised ground relating to identity of the lands, though they raised the grounds regarding rehabilitation, pollution and el feet of acquisition on their day-to-day life etc. On the above material on record, I find no substance in the arguments advance by learned counsel for the petitioners relating to allege defect in the notice issued u/s 4 (1) of the L.A. Act.

27. For the foregoing reasons, I do not find any substance in the writ petitions. The writ petitions, therefore, are liable to be dismissed and are hereby dismissed. There shall be no orders as to cost(s).