
(1974) 06 MAD CK 0023
In the Madras High Court

Mohammed Karimuddin (died) and Others	APPELLANT
Vs	
The State of Madras and Others	RESPONDENT

Date of Decision : 21-06-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115
Land Acquisition Act, 1894 — Section 48
Tamil Nadu State Housing Board Act, 1961 — Section 56

Citation : (1975) 2 MLJ 396

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—In this Writ Petition the petitioners seek to quash the order of the 1st respondent in G.O. Ms. No. 226 (Housing), Labour Department, dated 3rd June, 1969 and the consequent notification of withdrawal from acquisition of certain lands of the petitioners under the provisions of the Land Acquisition Act, which notification was published in the Fort St. George Gazette, dated 11th June, 1969. The petitioners are the owners of an extent of 15.94 acres of land in Survey No. 1/1 - A in Ammbakkam, which is comprised in the Madras extended Area Taluk. The lands are situate on the Madras-Bangalore Trunk Road and near a developed colony known as Shenoy Nagar and is in the neighbourhood of the well-known colony of Anna Nagar. The 1st petitioner died during the pendency of the Writ Petition and his surviving legal representatives are said to be the 2nd and 3rd petitioners. The original registered owner of the property was late Khader Mohideen Sahib. On 10th August, 1960 a notification u/s 4 (1) of the Land Acquisition Act was published notifying the intention to acquire the above lands belonging to Khader Mohideen Sahib for development of the areas in the neighbourhood of Madras City in accordance with the Land Acquisition and Development Schemes of the Government of India. It is not in dispute that the development of the neighbourhood of the Madras City was undertaken by the Tamil Nadu State Housing Board under the powers vested in it by the Tamil Nadu State Housing Board Act. In pursuance of the general policy of

framing and executing improvement schemes the acquisition of the above land was undertaken by the State. It is not also equally in dispute that under the improvement scheme which covered the land as above, a provision was made for acquisition of these lands for the avowed purpose of the scheme. If once a scheme is so approved, the same could only be cancelled by the Board as such u/s 56 of the Tamil Nadu State Housing Board Act, 1961. The Board is a statutory corporate body having a perpetual succession and a common seal, as delineated in Sections 3 and 4 of the above Act. Thus, the notification u/s 4 (1) of the Land Acquisition Act, dated 10th August, 1960 was issued in the above background under the normal provisions of the Land Acquisition Act. The notice u/s 5-A of the Land Acquisition Act, hereinafter referred to as the Act, was served on the petitioners on 25th August, 1960. The petitioners expressed their desire that their entire land in the survey number, which was of an extent of 19.76 acres may be acquired instead of the major block being split into two by reason of the acquisition. In effect, therefore, the petitioners, by their statement, dated 27th October, 1960, categorically stated that they had no objection for the acquisition of the land in question. The case of the petitioners is that at the time when the notification u/s 4 (1) of the Act was published in the Gazette; it was a vacant site as conceded by the Surveyors in the State Housing Board Department. It appears, however, that several persons, who apparently formed themselves into an Association called the N.S.K. Nagar Kudivazhvor Sangam, Arumbakkam, filed statements to the effect that they had built huts on the land in question and that they were organising a Co-operative Society to purchase the land with the help of the Government and they have no objection to the acquisition of the land provided they were given alternative accommodation in case they are compelled to shift from this area. An enquiry u/s 5-A of the Act was held and the petitioners state that the occupants as above, though unauthorised, were given a hearing. It is in that context the petitioners alleged that on 7th December, 1960, the Collector of Madras, as the Land Acquisition Officer, sent to the Secretary to Government, Industries, Labour and Co-operation Department, a draft declaration which has to follow the usual enquiry u/s 5-A of the Act to the effect that about 301 persons have put up huts in the land and that the hut-dwellers have no objection to the acquisition if the sites in the acquired area are allotted to them or an alternative mode of rehabilitation is thought of by the authorities in the course of execution of the development scheme. The Joint Director of Town Planning, it appears, endorsed that the land in question is absolutely needed for development of the neighbourhood of the Madras City and the scheme has to be proceeded with. On 17th April, 1961, the Board of Revenue, as is seen from the records, recommended the acquisition and this was done after fully apprising themselves of the objections of the hut-dwellers. It was in those circumstances that the draft declaration proposed by the Collector was accepted, and the Government, on 6th December, 1961, approved of the declaration and caused it to be published on that date. It has also been brought out before me that Government specifically informed the State Housing Board that they have accepted the resolutions of the Board and recommended that the present

occupiers be given preference in allotment of future sites in the developed area and that the occupants be permitted to continue until alternative sites are provided and that squatters be evicted but bearing in mind that in deserving cases they should be rehabilitated. It should be, however, stated that it was only after the notice u/s 4 (1) of the Act was issued, an attempt was made by the statutory authorities to include the names of the occupants in the self-styled N.S.K. Nagar. As by then two years had lapsed, and as there was no award enquiry as it is popularly called, the petitioners through counsel, on 10th April, 1962, complained about the non-passing of the award and called upon the Land Acquisition Officer to take further proceedings and pass an award or drop the acquisition proposal forthwith. On receipt of this notice the appropriate authorities, without dropping the proceedings, intended to proceed with it. On 30th July, 1972, notices under Sections 9 (3) and 10 of the Act were served on the petitioners, in which, for the first time, the names of about 260 hut-dwellers were noticed as if they were interested in the land. The petitioners' case is that they had absolutely no interest in the land at any relevant point of time. The petitioners filed their statements seeking for reasonable compensation for their lands. The petitioners obviously were under the impression that after the award enquiry fixed as above on 27th August, 1962, the Land Acquisition Officer would pass the usual award fixing a reasonable compensation for their lands. But nearly two years thereafter, and four years after the date of the notification u/s 4 (1) of the Act, a fresh notice u/s 5-A of the Act was once again given. Obviously this step was taken by reason of a decision of this Court reported in *S. Sivaprakasa Mudaliar Vs. The State of Madras and Another*, in which the petitioners were not parties. The acquisition by then was questioned by owners in the neighbourhood of the petitioners' lands and it was in those circumstances and having regard to certain observations made by this Court in the above case a fresh Section 5-A enquiry was directed by this Court in cases where no such enquiry was held. This was, however, misunderstood and a second opportunity to the petitioners by way of a second enquiry u/s 5-A was given. Again the petitioners expressed their no objection to the acquisition and pointed out that the other occupants either in the huts or in the houses which by then cropped up unauthorisedly were totally disinterested in the lands or in the acquisition. The Collector of Madras, again on 27th June, 1964, as the Land Acquisition Officer, while recommending the acquisition and mentioning the existence of 338 huts and 4 tiled houses, stated that the occupants were prepared to have the existing land divided and allotted to them on payment of costs and expressly observed that the objections of the occupants may be overruled as they would be given alternate accommodation by the State Housing Board when they are actually evicted pursuant to the framing and implementation of the improvement scheme. Even thereafter nothing happened. The petitioners once again notified the Land Acquisition Officer that they would be moving the Court for a writ of mandamus for the passing of an award if one such is not passed for all that had happened. Curiously enough, in August, 1965, a third enquiry u/s 5-A of the Act was held under directions from the Board of Revenue as it was represented that the records were not traceable.

In those circumstances the Collector, on 1st October, 1965, sent a third draft declaration to the Government mentioning that by then about 345 occupants had come up in the area and once again recommended that their objections may be overruled and that they could be provided with alternative accommodation by the State Housing Board. At this stage, a second declaration u/s 6 was made by the Government and it should therefore be deemed that the Government was satisfied that the acquisition process should go on in spite of the occupants having unauthorisedly come up on the land. Pursuant to this notification u/s 6, on 6th April, 1966, once again the award enquiry was taken up and notices under Sections 9 (3) and 10 were given not only to the petitioners but also to the occupants as if they were interested persons. On 16th May, 1966, the enquiry was held.

2. It is at this stage that certain special features which loomed very large in the instant case, have to be considered in detail so as to appreciate the contentions of parties. Apparently, in the course of the award enquiry as above, the occupants styling themselves as members of the N.S.K. Nagar Kudivazhvor Sangam, Arumbakkam, made representations to the Land Acquisition Officer. It is seen from the letter of the Special Deputy Collector to the Chairman, State Housing Board, dated 17th May, 1966 that, he gained the impression during the enquiry that the Chairman, State Housing Board, represented to the N. S. K. Nagar Kudivazhvor Sangam that the land acquisition proposals had been dropped. He, therefore, enquired whether he could proceed to pass an award. On 28th May, 1966, the Chairman, State Housing Board, wrote directly to the Secretary to Government, Industries, Labour and Co-operation Department, after referring to the draft declaration proposals and the earlier approval given by the State Government to the same:

It has proposed to drop the acquisition of the land in S. No. 1/1-A, Arumbakkam village, now occupied by N.S.K. Nagar....

Even in this letter it is not stated that the area which is not occupied by the occupants of N. S. K. Nagar was not required by the State Housing Board for purposes of the improvement scheme. This is followed up by another letter by the Chairman of the State Housing Board referring to the hut-dwellers in the area and expressing its opinion that after careful examination it was considered by it that the land may be excluded from acquisition. The Secretary to Government, on 5th October, 1966, wrote back to the Chairman, State Housing Board, pointing-out that the hut-dwellers' objections had already been overruled on the recommendation of the Collector of Madras, and enquired as to how the Chairman, State Housing Board, has now taken a different view and recommended the withdrawal of the acquisition. He asked the Chairman to clarify the position. In this letter, dated 21st December, 1966, the Chairman, State Housing Board, wrote thus:

I am to state that M(I) and M(H) after personal inspection of the area have decided to leave out the area comprised of N. S. K. Nagar from acquisition. In

pursuance of the above decision only I have recommended the exclusion of the land from acquisition.

The italics is mine. Soon thereafter the petitioner filed a Writ Petition for the issue of a writ of mandamus to pass an award, but this was dismissed at the admission stage with directions to approach the Government. On 13th March, 1967, the Government issued G.O Ms. No. 925, Housing, to the effect that the Chairman, State Housing Board, recommended that S. No. 1/1-A, Arumbakkam, be excluded from acquisition and it purports to say that on such recommendation and after careful examination the Government decided that the land be excluded from acquisition for West Madras Neighbourhood Project. The Collector was asked to put up necessary proposals for withdrawal u/s 48 (1) of the Land Acquisition Act. No such step was immediately taken either by the Collector of Madras or by the Government. On the other hand, on 21st September, 1967 the Government replied to the petitioner's notice in pursuance of the earlier writ which was dismissed at the admission stage, stating that the question of withdrawal was under consideration. Obviously, therefore, no final decision was taken till then. On 17th November, 1967 a second Writ Petition, (Mohammed Karimuddin Saheb and two others v. State of Madras by the Special Deputy Collector of Land Acquisition, State Housing Board, Schemes, Madras-1) W.P. No. 3467 of 1967, was filed to pass an award, which was again dismissed at the admission stage with a direction to the Government to dispose of the matter within three months. No action was taken by the Government pursuant to the earlier attitude of theirs. A third Writ Petition, (Mohammed Karimuddin Saheb and two others v. State of Madras represented by Special Deputy Collector of Land Acquisition, State Housing Board, Schemes, Madras-1) W.P. No. 705 of 1968, was filed for a similar relief, for a mandamus to the appropriate officer to pass an award, as by then every possible enquiry contemplated under the Land Acquisition Act was over. After a full hearing, Kailasam, J., allowed the Writ Petition as the Government did not pursue their earlier vague intention to withdraw even though several opportunities were given by the Court during the hearing. The order in W.P. No. 705 of 1968 has become final as it has not been appealed against. On 29th November, 1968 the petitioner called for compliance of the order of Court. Even then nothing was done. Nearly ten months later an application for " contempt was filed and in particular the Land Acquisition Officer was made the respondent as being the contempner. It is only thereafter the impugned notification u/s 48 (1) was made and was sought to be published in the Gazette on 11th June, 1969. The contempt application was closed after accepting the apology tendered by the Land Acquisition Officer. It is in the above circumstances that the present writ petition for the issue of a writ of certiorari to quash the notification u/s 48 (1) of the Land Acquisition Act was filed.

3. The contention of the petitioner is that after all that has happened for nearly nine years subsequent to the first notification u/s 4 (1) of the Land Acquisition Act, it cannot be said that possession of the lands was not taken by the Government. Reliance is strongly placed upon the manner in which the land

acquisition process was set into motion and how trespassers were encouraged to occupy private land which was by then sequestered under the power of eminent domain of the State. Reference was made to the fact that the first notification u/s 4 (1) did not mention any occupant and that it was only in 1962 when notices under Sections 9(3) and 10 were issued in connection with an award enquiry that about 260 trespassers were noted as interested persons in occupation of the land. It was also submitted that having regard to the peculiar facts and circumstances of this case whereby the Town Planning authorities who were a wing of the State, the State Housing Board authorities and the authorities of the Madras Corporation, the latter two being statutory bodies under the immediate supervision and control of the State Government sought to encourage the occupancy of such trespassers by permitting them to put up pucca structures thereon and by spending public money for the improvements of the said colony called N. S. K. Nagar. It was contended that it was through the active support and co-operation of the Government and the statutory bodies under their control the trespassers have gained ground into the land though they conceded in unequivocal terms in the correspondence which I shall presently refer to, that they had absolutely no right, title or interest over the land. In fact, expenditure of public money was incurred as if it was a budgetable item of expenditure and the Said budget having been finally approved by the State Government which they reviewed, it creates inter alia a situation of promissory estoppel which would not permit the State to resurrect an exhausted power u/s 48 of the Land Acquisition Act. Pertinent reference was made to the fact that the Corporation put up public roads and streets and lighted them at public cost and this was all to the knowledge of and with the connivance of the State Government. The petitioner is said to have been deprived of every conceivable right over his property and it is not possible for the Government to invoke Section 48 (1) of the Land Acquisition Act and hence the impugned notification is without jurisdiction. Secondly, it was said that the effect of the action of the respondent in withdrawing the acquisition proceedings is that they are taking away private property and practically vesting the same without authority in the trespassers. Though at every conceivable point of time the Collector of Madras, the Chairman, State Housing Board and the Commissioner, Corporation of Madras, including the Directorate of Town Planning were all parties to conferences in which they would not countenance the objection of the trespassers and on the other hand were repeatedly recommending the acquisition of the property, the subject cannot be left to an on-the-spot decision by the executive to leave the area comprised by N. S. K. Nagar from acquisition purely on humanitarian grounds. Though the award was ready to be passed by the Land Acquisition Officer, he did not pass it and this itself is reflective of lack of bona fides on the part of the State and its officers. It is only when a writ of mandamus is issued and after repeated directions by the Court in various writ petitions that the impugned notification was issued and this itself reflects that the 1st respondent acted hand in glove with the hut-wellers in N. S. K. Nagar. In the judgment of this Court in W.P. No. 705 of 1968 the Court did not agree with the reasons given by the State in not

completing the acquisition. There has been a deliberate postponement of the completion of a legal process resulting in an arbitrary and capricious order being passed in the shape of the impugned notification. Even though Section 48 (1) envisages a power in the State to withdraw from acquisition a land of which possession has not been taken, yet such a power is not available in the instant case having regard to the circumstances and acts already referred to and in the light of the telling events that happened between 1960 and 1969.

4. Incidentally it pointed out in the supplemental affidavit filed by the petitioner that the lands were not unsuitable for the scheme. As a matter of fact no record has been produced to show that the State Housing Board, in a manner known to law, has given up this scheme and the various limbs including the acquisition of the petitioner's lands for purposes of the said scheme. It is expressly stated that the notification is made with an ulterior motive of benefiting the hut-dwellers and in any event there are no grounds or circumstances upon which the Government could have come to the conclusion that the land was not suitable for the scheme. The said opinion, if any, formed on the spot is not the result of any objective approach or assessment of the relevant materials. Such materials were considered earlier by the State when it made the declaration u/s 6 and the present situation, therefore, projects lack of bona fides on the part of the authorities. Reliance was placed upon the observations of the Select Committee in paragraph 12 of the report dated 2nd February, 1893 for effecting the change in law and the circumstances under which the power u/s 48 could be invoked. It is said in the report that experience has shown that the only occasion on which powers of withdrawal could be really useful are when an award has shown that the Government was seriously misled by an underestimate of the value of the land. Reference was also made to the observations made by the Collector of Madras, who in consultation with the Chairman, State Housing Board, has stated that the hut-dwellers have requested the exclusion of the land from acquisition and that the Chairman has recommended that the land may be excluded from acquisition. It is this which promoted the Government to make the impugned order. The argument, however, is that the Chairman, State Housing Board, did not make any such recommendation on his own, but he was prompted to do so because M(I) and M(H), after inspection, have decided to leave out the area comprised of N. S. K. Nagar from acquisition. It was brought out in the course of arguments that M(I) refers to Minister of Industries and M(H) refers to Minister for Housing.

5. In the counter-affidavit filed by the State the facts stated are clearly admitted. It is said that the Government decided to withdraw these lands from acquisition even in 1967 and that they had the right to issue the impugned order, though in 1969. The factual allegation that possession of the property has been taken in some shape or other is denied. It is said that no prejudice has been caused to the petitioner and the allegation that the withdrawal is motivated and for the purpose of helping the occupants in N.S.K. Nagar is denied. If the hut-dwellers occupied these lands in the course of the land acquisition process, the petitioner

is to be blamed for it. As the Government had an absolute power u/s 48 to withdraw the lands from acquisition, before possession is taken they did so.

6. The 2nd respondent, namely, the Corporation of Madras, admits that the Kalai Valluva Mandram which posed itself to be a Welfare Association in N. S. K. Nagar, approached the Corporation for locating an elementary school and for improving the locality and that the Corporation agreed to do so at the instance of the Councillor of the division and that no plan has been sanctioned by the Corporation for any construction over these lands. It is conceded that the beneficiary of the acquisition process was the Chairman, State Housing Board and it was at his instance the impugned notification was made. For all the above reasons it is said that the writ petition is devoid of merit.

7. In the course of arguments learned Counsel for the petitioner mostly relied upon the facts and circumstances of this case and urged that by the time the notification was issued by the State, there was an exhaustion of power since it should reasonably be presumed in the instant case that the Government should be deemed to have taken possession of the lands in question. Once this position is reached, the impugned notification fails for want of jurisdiction. The theory of promissory estoppel is also pressed into service. In answer to the allegation that the petitioner is not prejudiced, it is said that the property is a total loss to him and as he could not interfere with the land in any manner after a notification u/s 4 (1) is made and after the lands are included in a scheme sanctioned by the State Housing Board under the State Housing Board Act it is idle to say that the petitioner is to be blamed for his inaction in having allowed the trespassers to get into the land and foist themselves in it. On the other hand, the learned Advocate General would say that as possession, in fact, has not been taken by the Government and as there is no evidence to that effect, the impugned notification does not suffer from any error of jurisdiction or want of jurisdiction or excessive exercise of jurisdiction. The State Housing Board merely appeared by counsel and would not urge any serious contention for the consideration of this Court.

8. Having regard to the long drawn process in which the suit land was involved in an acquisition process and as such an event by itself is a strange one which is not normal, this Court felt that it was necessary to get sufficient facts from the records which the parties are obliged to produce in a proceeding under Article 226, and for that purpose appointed a Commissioner to go into the question and find out the nature and purport of the events that transpired with reference to the correspondence and the public records which give a colour to the land acquisition proceedings which are to be scrutinised by me.

9. We have already seen that the notification u/s 4 (1) of the Land Acquisition Act was made by the Government at the instance of the beneficiary namely, the State Housing Board, it is common ground that the State Housing Board was of the view that for purposes of development of the areas in the neighbourhood of the Madras City and the development schemes of the Government of India, the

lands in question were needed for purposes of such development. In the said notification no reference is made to any person in occupation of the premises. But soon thereafter representations were received from persons who are admittedly trespassers into the land stating that they have occupied it under a mistaken impression that it was Government land and that they were prepared to purchase the land with the help of the Government and they requested the Government to modify the scheme so as to suit their own purposes. From the records of the Land Acquisition Officer it is seen that the persons in occupation were keen on securing parcels of the acquired lands at cheap prices and that they had no objection to the acquisition and that they may be allowed to continue in the present lands till alternate sites are provided. The trespassers began to slowly develop their case from time to time and there were many other emigrants into the land later. When such representations were made, a conference was held as between the Joint Director of Town Planning, Engineer, Corporation of Madras, in the presence of the Land Acquisition Officer. In November, 1960, the Government issued a Memo, dated 21st November, 1960, but this document has not been produced. A reference to it, however, is made in the letter from the Special Deputy Collector to the Director of Town Planning (M5 28741 /60 dated 5th January, 1961). The following is the relevant portion of the letter:

This land is within the scheme area shown in the composite blue print plan for West Madras Neighbourhood prepared by the Joint Director of Town Planning. The Joint Director of Town Planning and the Madras Corporation Engineer expressed the view at a conference held after a joint inspection that no land in the scheme area could be exempted from acquisition and all the lands and the structures within the scheme area are to be acquired.

Even the Board of Revenue, as early as January, 1961, in their Ref. No. 14. 18526/60-1 dated 28th January, 1961, asked the Collector to ascertain and report as to how the Corporation of Madras has proposed to rehabilitate the families affected by the acquisition in the case. When the Commissioner was asked about it, he replied in March, 1961 as follows:

With reference to your letter cited I have to state that the building applications submitted by the occupants in S. No. 1/1-A of Arumbakkam have been refused by this office for the reasons that the layout for this area has not been got sanctioned and that this site is notified for acquisition u/s 4(1) of the Land Acquisition Act. The appeal of these residents against the refusal of their building applications is now pending consideration of the Standing Committee (Town Planning and Improvements).

Since this field is included in the West Madras Township Scheme the question of re-habilitation of the families affected by the proposed acquisition should form part of the Township Schemes and is a matter pertaining to the State Housing Board which will be executing the Scheme.

The Joint Director of Town Planning expressed the view, in his letter Re. No. 3237.61 dated 29th March, 1961, that it would not be possible to recommend the exclusion of the land from the acquisition and that the question of rehabilitating the families now resident in the area would be a question for the State Housing Board who are acquiring the land and will not be the responsibility of the Corporation of Madras. It was in those circumstances that the Board strongly recommended that the declaration u/s 6 may be proceeded with and the families affected by the acquisition may be sympathetically considered by the State Housing Board who shall take steps to rehabilitate them. The Government, Industries, Labour and Co-operation Department, in their Memorandum No. 158236 S.I/60-11 dated 13th February, 1962 have stated as follows:

While submitting the Draft Declaration u/s 6 of the Land Acquisition Act, in respect of certain lands required for Neighbourhood Projects, the Collector of Madras has brought to the notice of Government the requests of the families affected by acquisition, for alternative accommodation. The Board of Revenue has suggested that the State Housing Board may be requested to rehabilitate the affected families. The matter was referred to the State Housing Board, which considered the question in all aspects and has resolved as follows:

- (a) The owners may be given preference in allotment of building sites on hire purchase subject to eligibility and other rules, at the price fixed by the Board for the public, such sites being, as far as possible, near their original places of occupation;
- (b) The authorised tenants may be given plots on sale basis at prices fixed for the public, or in the alternative small plots may be" leased out to such of those who are unable to buy, on economic lease rents prescribed by the Board;
- (c) The case of squatters may be left to Government to decide on merits.

2. The Government have considered the recommendation of the State Housing Board and passed the following orders :--.

Item (a) The Government accept the recommendation. Item (b) The Government accept the recommendation. The State Housing Board is however, requested to see that the authorised tenants are allowed to continue to dwell in the present dwellings (on terms fixed by the Board) till alternative sites are provided to them.

Item (c) Generally the squatters should be evicted. In deserving cases, the State Housing Board will be instructed by Government to frame a suitable project under the Slum Clearance Scheme for their rehabilitation.

It is therefore very clear that in February, 1962 the Government had in view the case of the squatters and they were of the opinion that the squatters should be evicted and that in deserving cases the State Housing Board will be instructed by the Government to frame a suitable project under the Slum Clearance Scheme for their rehabilitation,

10. Even then the squatters went on submitting memorandum after memorandum to the Government. The Collector of Madras in D. Dis. 1802/61 dated 27th June, 1964 stated that the objections of the squatters may be overruled, that their objections are of a common nature and that they will be given alternative accommodation by the State Housing Board when they are actually evicted. It may be of interest to point out that at every stage the squatters were admitting the title of the petitioner to the property; but their ultimate request was to pass orders to acquire the area and thereafter permit them to occupy those plots which they have clandestinely occupied, but after accepting a reasonable cost from them. After all this, the Collector of Madras wrote to the Government in J6.D.Dis. 26389/64 dated 1st October, 1965 stating that the objections of the squatters were without substance and that they may be overruled and he sought for orders for the publication of the declaration u/s 6. Pursuant to that, declaration u/s 6 was made and an award enquiry was held in which the occupants of the so called N.S.K. Nagar appeared before the Land Acquisition Officer. He also expressed the view that as the award enquiry is over whether he may proceed to pass the award. It was at this stage a hint was given in the letter of the Land Acquisition Officer, dated 17th May, 1966, that the Secretary of the Kudivazvor Sangam of N.S.K. Nagar met the Chairman, State Housing Board and that he was informed that the land acquisition proposal has been dropped. The files do not disclose as to how and in what circumstances the Chairman, State Housing Board, who was very eager to acquire the lands, recommended that it could be dropped. When the Chairman was confronted with his inconsistent attitude the Chairman wrote to the Government as follows:

I state that the land bearing S. No. 1/1 -A of Arumbakkam which comprises of N.S.K. Nagar for which the Draft Declaration has been approved by the Government in the G.O. cited is full of huts numbering about 350. The hut-dwellers have requested the exclusion of the land from acquisition. After careful examination it is considered that the land may be excluded from acquisition. I therefore request early orders of Government excluding the land from acquisition.

In this letter it is clear that the only consideration for dropping the acquisition after the infiltration of the trespassers into the land, which was practically encouraged by both the Corporation authorities and the Governmental agencies, was that the hut-dwellers have requested the exclusion of the land from acquisition and therefore the lands may be excluded from acquisition. When he was further confronted by the Secretary to Government, Industries, Labour and Housing, with the following letter,

I am to invite attention to the letter cited and to state that the land in S.No. 1/1-A full of huts numbering about 350 has already been brought to the notice at the time of 5-A enquiry and the objection to acquire this land was overruled on the recommendation of the Collector of Madras and the Chairman, State Housing Board. But it is not known why the Chairman, State Housing Board, has now taken a different view and recommended the withdrawal from acquisition. I am

to request the Chairman to clarify the position at a very early date.

the Chairman wrote back:

With reference to your letter cited, I am to state that M(I) and M(H) after personal inspection of the area have decided to leave out the area comprised of N.S.K. Nagar from acquisition. In pursuance of the above decision only, I have recommended the exclusion of the land from acquisition.

Thereafter the Government proceeded on the basis that it was the Chairman, State Housing Board, who was not for acquisition and that he recommended that the lands may be excluded from acquisition. It was made out in G.O. Ms. No. 925 (Housing), Department of Industries, Labour and Housing, dated 13th March, 1967, that it was on the recommendation of the Chairman that the Government decided to exclude the lands from acquisition, Two years later and after all that has happened, the impugned notification has come.

11. It is thus seen that the Chairman, State Housing Board, by himself did not recommend exclusion of the land from acquisition. As a matter of fact, he was opposing the hut-dwellers and was keen upon acquiring the land. It is common ground that the statutory Board functioning under the Madras State Housing Board, did not pass any resolution cancelling the scheme or avoiding the scheme in a manner known to law. The narrative of facts above discloses that it was purely on humanitarian considerations, but by totally ignoring the rights of the petitioner, that the Government made an On the spot decision through the executive to drop the acquisition. The Chairman, State Housing Board, had to confess that it was because of the decision of the executive in the above manner that he recommended the withdrawal. Nothing has been brought to my notice to show that the entire circumstances were reviewed by the Chairman, State Housing Board or by the executive at any time to come to a reasonable decision on a fact which has become almost a *fait accompli*. Government knew that the trespassers have occupied the land. The Corporation of Madras encouraged them by spending public money and putting up streets and lighting therein and by opening schools. Mr. Thillai Villalan sought to argue that the Corporation was in the dark about the affairs. I do not agree. The Corporation was represented by its Engineer in conferences, which were held from time to time and the Corporation knew that the hut dwellers therein had no right to occupy the private land, but yet public money was spent to put up roads in it and even lighting thereon. This was duly budgeted for. That a large sum of money has been so spent from and out of the Corporation funds is not in dispute in this case. But what is stated by Mr. Thillai Villalan is that such expenditure was incurred at the instance of the Municipal Councillor and that it was not a regular expenditure. He would, however, admit that the expenditure was budgeted and that the said budget was forwarded to the Government which ultimately approved of the same. The State Housing Board represented by counsel was not in a position to take a definite stand and no further arguments were addressed before me. It is in these circumstances the subject comes up before me for the issue of a writ of

certiorari.

12. The notification u/s 48 (1) of the Land Acquisition Act, for withdrawal of the land acquisition process refers to the letters of the Chairman, State Housing Board. The decision taken by the Government in G.O.Ms. No. 925-(Housing), Department of Industries, Labour and Housing, dated 13th March, 1967 is also one of the captioned references. In the above Government Order it is said that the Chairman, State Housing Board, has recommended that this land may be excluded from acquisition and it was consequent upon this the Government decided to exclude the land from acquisition. Factually this has no legs to stand. When the Chairman, State Housing Board, was confronted with such a situation, he categorically said in Exhibit P-4I, one of the exhibits marked by the Commissioner, that it was the State executive represented by Ministers who decided to leave out the area and it is only pursuant to the above decision he recommended the exclusion of the land from acquisition. I have also referred to the fact that the executive took an on-the-spot decision when they inspected the land. Every other limb of the State Government, such as the State Housing Board, the Director of Town Planning, and the statutory authorities, like the Corporation of Madras and even the executive, namely, the State Government at one time and prior to the declaration made u/s 6 of the Land Acquisition Act in Exhibit P-26, were irrefragably of the view that the squatters in occupation of a portion of the land to be acquired may be given plots after the scheme is developed by the State Housing Board on prices to be fixed by the Board and the unauthorised occupants be dealt with by the Government on merits. In fact, the Government, while accepting the recommendations made by the Collector of Madras, Board of Revenue and the Chairman, State Housing Board, said in Exhibit P-26 that the authorised tenants be allowed to continue to dwell in the present dwellings till alternative sites are provided to them. On the question whether the squatters should be evicted, the Government agreed that they should be so evicted, but in deserving cases the State Housing Board be instructed to frame a suitable project under the Slum Clearance Scheme for their rehabilitation. After all this, there is nothing on record to show as to why the executive through its Ministers made a decision without reference to merits to exclude the land occupied by the occupants from acquisition and ultimately decided to drop out the entire land from acquisition. On the merits it is clear that the executive after inspection decided only to leave out the area comprised of N.S.K. Nagar from acquisition. It did not decide at any time until it passed the impugned order to exclude from acquisition the entire property belonging to the petitioner for purposes of the West Madras Neighbourhood Project. Here also there is a lacuna. I am, therefore, satisfied that there is an error apparent in the order as both G.O.Ms. No. 925 dated 13th March, 1967 (Exhibit P-42) and also Exhibit P-43, which is the challenged notification, do contain information which is obviously an apparent error. The Chairman, State Housing Board, did not recommend that the land may be excluded from acquisition. On the other hand, he made it clear that in pursuance of the decision of the executive to leave out

the area comprising of N.S.K. Nagar from acquisition, he says that he recommended the exclusion of the said land from acquisition. Even then, it is only that portion of the land which comprises of the so called N.S.K. Nagar which ought to have been excluded. But in the challenged notification the entire land has been withdrawn. This apparent error, therefore, necessarily justifies judicial interference under Article 226 of the Constitution.

13. The next question is whether Section 48 (1) of the Land Acquisition Act should be literally interpreted and understood. No doubt, the contention of the learned Advocate General that as physical possession has not been taken by the State, the jurisdiction of the State to withdraw the subject-matter of acquisition from acquisition is always available, is a proposition which prima facie has to be accepted. But in the peculiar case with which I am confronted, it is necessary to see whether the owner has been deprived of possession of the land, the term possession being understood in a legalistic and juristic way. No doubt, the force of statute law is strong and imperative. But it should not be forgotten that the law draws its waters from the natural springs of society itself, not from the artificial reservoir of Parliament. As pointed out by a witty writer Judge E. A. Parry in *The Drama of the Law*, "statutes" are only quoted. Their disastrous effect on human happiness has made them rightly repellant to men of generous minds. Even Judges can scarcely hide their contempt for statutes that enact the opposite of what their author intended and only serve to entangle the simple and innocent in a net of ruin." Before this aspect is furthered, it is better to recapitulate once again the necessary facts.

14. Notification u/s 4 (1) was made in August, 1960. At that time there was no indication that there were any squatters in the land. The Collector of Madras recommended the acquisition in December, 1960. The Joint Director of Town Planning was emphatic that the property should not be left out of acquisition because the vast developing Poonamallee High Road would call for widening and introduction of service roads and the major design of the neighbourhood will require the land to be used for purposes of other than what it is now being used for. This observation was made by the Director of Town Planning in March, 1961. The Board of Revenue, in April, 1961, after considering the question of squatters who by then got into the field, recommended a declaration to be made u/s 6. The Government, in December, 1961 made the first declaration u/s 6, if such an expression could be used. This was obviously made after the Government was satisfied that the presence of squatters cannot be a hindrance for acquisition. In February, 1962, the Government made it clear in Exhibit P-24 that it had accepted the resolutions of the Board and the squatters be evicted but in deserving cases they may be rehabilitated. Then followed a lull, because between 1962 and 1964 third parties interfered and questioned the very scheme of the State Housing Board and consequentially the acquisition of lands for purposes of the neighbourhood scheme. Once again in 1974 the matter was taken up after the judgment went against the owners in which the petitioner did not participate. In June, 1964, the Collector once again after making a specific reference to the

request of the squatters, recommended that the land in question may be acquired. Again an enquiry u/s 5-A was made. In October, 1965 the Collector sent again a draft declaration recommending acquisition and observing that the squatters could be sympathetically dealt with by the State Housing Board. In April, 1966 the Government accepted the same and was satisfied that the land is required for a public purpose. During this period of six years the petitioner could not have dealt with the land in any manner as by then he was lulled into a security by the promises held out by the Government Officials including the Collector of Madras, the Board of Revenue, the Land Acquisition Officer and the Director of Town Planning that in spite of the infiltration by trespassers his property could be acquired. The sanctioned scheme has not been amended to avoid the acquisition. The petitioner therefore, could not have taken any steps in any direction to assert his right on the land within the scheme area when the Government was looking after his interests. It is only thereafter that a sudden turn was made in 1966 when the State executive through its Ministers after personal inspection of the area decided to leave the area comprised of N.S.K. Nagar from acquisition. No file has been shown to me as to whether while expressing that view or deciding in that way the State Government exercised its mind and considered the relevant material. It seems to me that the decision was arrived at only on humanitarian consideration, but while contemporaneously ignoring private rights.

15. In such circumstances when the Government decides nearly after nine years to withdraw from acquisition a particular land for reasons which are not relevant, but purely on extraneous considerations, it is necessary to see and adjudge whether such a decision is made by a quasi-judicial tribunal or not and whether it is sustainable in law.

16. Apart from the apparent error in the impugned order which by itself is a ground for interference under Article 226 of the Constitution for the issue of a writ of certiorari to remove such an erroneous order, other features in this case broadly referred to above would enable the petitioner to succeed.

17. The law of Eminent Domain enables the State to compulsory acquire private land. By such a statutory process the owner is deprived of his rights to own property. This he has to suffer in public interest. But what is relevant for our purpose is that the land acquisition process which contemplates the ultimate taking of possession, necessarily involves a substantial abridgment of the rights of ownership as would amount to deprivation of the owner of his property and consequential damage, as is referred to in Section 23 of the Land Acquisition Act. The word "possession" in Section 48 of the Act has to be interpreted liberally and in the above light. No irrefragable test can be laid down as to whether on a furnished hypothesis, the owner is deprived of his property by the land acquisition process beginning from the notification u/s 4 (1) and ending with the award enquiry under Sections 9 and 10 of the Act. The words "possession" and "deprivation" have been considered by the Supreme Court while interpreting

Article 31 of the Constitution of India. In my view, the meaning of those terms in the decided cases, though arising under Article 31 of the Constitution, provide a sale guide for interpreting the word "possession" in Section 48 (1) of the Land Acquisition Act, which term engulfs within it the expression "substantial deprivation of rights of ownership". In *The State of West Bengal Vs. Subodh Gopal Bose and Others*, , it is said:

Broadly speaking, it may be said that an abridgement would be so substantial as to amount to deprivation...if in effect it withheld the property from the possession and enjoyment of the owner or seriously impaired its use and enjoyment by him or materially reduced its value.

To a similar effect are the observations of the supreme court in the *Second Molapur Mills Case* 1954 S.C.R. 674 : 1954 S.C.J 175 : (1954) 1 M.L.J. 355 : AIR 1954 S.C. 119:

By substantial deprivation I mean the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to or interest in property, The form is unessential. It is the substance that we must seek.

18. It is, therefore, fairly dear that acquisition of property is equivalent to substantial deprivation of property rights. An extinguishment of private right in property is possible by objective acts such as physical taking over as well as by acts of omissions and commissions leading to the same effect and resulting in robbing of the owner of the attributes of enjoyment which are annexed to ownership. As an eminent author has said:

Just as the power of eminent domain is an incident of sovereignty and does not require express constitutional provision, so also is the liability to compensation by the State to the deprived owner an inseparable incident or concomitant of the exercise of the power of eminent domain.

19. In the instant case for nine years, the owner was lulled into security that his property was eminently suited for a public purpose, to wit the formation of the West Madras Neighbourhood Scheme when it has not been amended or revoked As already stated, all the wings of the Governmental machinery agreed that the land had to be acquired In fact, they were not prepared to accede to the requests of the trespassers and occupants in the land for exclusion of the same from public acquisition. Public records of 1960 disclose that there were no occupants in the land when the notification u/s 4 (1) was made. The squatters encouraged by the sympathy expressed by the Government and other statutory bodies from time to time, changed their case as to the period of occupation; but this is irrelevant. Courts are guided by records and in the instant case we have the definite data in the notification u/s 4 (I) to the effect that no one was occupying the land on the date when the acquisition was proposed. Latterly the squatters began to occupy the land, no doubt without authority. But yet the Government was stubborn in that they expressed in Exhibit P-26 dated 13th

February, 1962 addressed to the Chairman, State Housing Board, that the squatters should be evicted and the acquisition proceeded with. They, however, expressed sympathy in favour of unauthorised occupants and recommended to the State Housing Board to rehabilitate them. The State Housing Board, which is the architect of the scheme which is still in force and which always recommended acquisition of the land in question, was directed to take steps towards such rehabilitation. Thus the petitioner as the owner was from time to time assured of the acquisition. Three Writ Petitions were filed and the action pursued by the Government authorities do all support the view that the acquisition was never intended to be given up. As already found, the Chairman, State Housing Board, did not say that the land may be withdrawn from acquisition. On what data and premises the Government acted is not known. On the merits, facts and circumstances, the reasonable inference appears to be that such an on the spot decision was taken purely on humanitarian and sympathetic grounds towards squatters and not on any relevant ground traceable to the object of the main enactment or in relation to acquisition of private property or withdrawal of such property from acquisition after nine long years. It is also pertinent to observe that such a biased decision was taken after the High Court issued a writ of mandamus and expected that the award would be passed as other formalities were by then over. The impugned order does not serve any of the objects of the Act and such exercise of power is arbitrary and capricious as it is based on irrelevant material. As pointed out by the Supreme Court in *S. Pratap Singh Vs. The State of Punjab*, :

Where an authority exercising a power has taken into account as a relevant factor something which it could not properly take into account, the exercise of the power would be bad. Where the purposes sought to be achieved are mixed, some relevant and some alien to the purpose, the difficulty is resolved by finding the dominant purpose which impelled the action, and where the power itself is conditioned by a purpose, the Courts would invalidate the exercise of the power when an irrelevant purpose is proved to have entered the mind of the authority ...The only question which could be considered by the Court is whether the authority vested with the power has paid attention to or taken into account circumstances, events or matters wholly extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated mala fide....If the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court.

(iii) It is not correct to say that mala fides in the sense of improper motive could be established only by direct evidence, that is, that it must be discernible from the other impugned or must be shown from the noting in the file which preceded that order. If bad faith would vitiate the order, the same can be deduced as a reasonable and inescapable inference from proved facts.

On a fair understanding of the facts and! appreciation of the matter which preceded the impugned order, the inference is inescapable that the order

challenged has been passed on grounds which are totally irrelevant. Further, in the above conspectus, one is bound to infer that there has been a total and complete destruction of private rights by reason of the acquisition process. The bundle of rights which can support the primary right of ownership have been slowly taken away. The Government machinery has acted to the prejudice of petitioner. The State Housing Board which had the main say in the matter, refrained from exercising its mind, but was satisfied to pithily follow the directions of the State, though the circumstances did not warrant such a course. The Corporation of Madras assisted the Government by spending public money over this land by improving the same, by providing roads and lighting and providing public schools therein. I am, therefore, of the view that by such acts of omissions and commissions on the part of the State, the State machinery and the statutory bodies which are controlled by it, the property sought to be acquired was withheld from the possession and enjoyment of the owner resulting in the total annihilation of the attributes of enjoyment which are annexed to ownership. If effectively the owner's right to enjoy the property has thus been prevented for nine years and when by such long delay and by such encouragement given to the trespassers there has been a serious impairment of the value of the property and the petitioner's right to enjoy it, then it is said that the State is estopped from exercising their statutory powers u/s 48 (1) of the Act, on the principle of promissory estoppel. This principle is well stated by George Spencer Bower and Turner in their treatise on Estoppel by Representation, Second Edition, in para. in at page 101:

It is further to be noted that a representee is deemed to have altered his position for the worse, not only when he has adopted a positive course of action which he would not have adopted but for his belief in the truth of the representation, but also when he has abstained from taking measures for his protection, security or advantage which he had in contemplation, and which, but for the representation, he would have taken; or when he has persisted in a line of conduct which otherwise he would have abandoned, or was on the point of abandoning. This kind of change, indeed, may even in a strictly literal sense be fairly described as an alteration of position, if the term "position" be understood as comprising a man's plans, schemes and projects, as well as his possessions--his attitude towards the future as well as the state of his affairs at the moment. But, be this as it may, there is no doubt that, in contemplation of law, "laying to rest" or "quieting", to use the expressions most frequently applied to this class of cases in the authorities, is one of the recognised modes of altering a man's position.

In the following illustration cited by the author, the principle is again well brought out:

...a representee has been held to have altered his position (in the above sense) to his prejudice where he has, on the faith of the representation, omitted to protect himself from the consequences of a void or frustrated transaction by effecting the object of that transaction elsewhere, or by other means, as he

would have done but for his belief in its validity and efficacy.

The Supreme Court in *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, , observed thus:

Even though the case does not fall within the terms of Section 115 of the Evidence Act, it is still open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution.

Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an *exparte* appraisalment of the circumstances in which the obligation has arisen.

Again in *Seth Sat Narain v. Union of India* C.A. No. 646 of 1964, the Supreme Court considered the principle of promissory estoppel and said that the principle will apply only if there is either a promise or an assurance intended to be acted upon and only when the same is in fact acted upon.

20. In the instant case an assurance was undoubtedly given by the state as early as 1960 to the effect that the petitioner's property would be acquired. Quite parallel to this assurance, the Government and its machinery including other statutory bodies under its control, were so acting so as to totally reduce the possessory rights of the petitioner as owner of the property to nil and completely render nugatory the property as private property. In those circumstances the assurance should be said to have been acted upon and in fact acted upon. Then on grounds of expediency and on some unknown and undisclosed ground of necessity if the State, on its own volition, decided to act against the assurance they are estopped from doing so on the principle of promissory estoppel. It is too late in the day for the State to say that they are not bound to continue the acquisition proceedings and that they have the residuary power to withdraw it from acquisition-In this context it is apposite to adopt the ratio of the Supreme Court in *Vijay Cotton and Oil Mills Ltd. Vs. The State of Gujarat*, . In the peculiar circumstances of that case the Government was prevented to resile from the election which it deliberately made. Following this , principles, the principle of election is equally applicable here in that the Governmental machinery at no time held that the acquisition was not for public purpose. As a matter of fact, the records disclose their incessant desire to acquire the land. The scheme is still in force. They have therefore elected to act in one way. But to resile from it on no foreseeable ground of accept--able material is not possible for the State in the purported exercise of power u/s 48 (1) of the Act.

21. The next pertinent question is whether the Government should be deemed to have acted as a quasi-judicial tribunal when it passed the challenged order.

Ordinarily the power of the Government to cancel a notification u/s 4(1) of the Act as also to withdraw lands of which possession was taken for purposes of acquisition has to be conceded both under the General Clauses Act as well as under the express provisions in the Land Acquisition Act. But when the facts in a given case are peculiar and when the principle of promissory estoppel or election is invocable because of such facts and circumstances, a further probe is necessary to find as to in what capacity the State acted when it issued the challenged notification u/s 48 (1) of the Land Acquisition Act.

The following rules are very well settled:

(1) The duty to act judicially may be inferred from provisions of a particular statute which would provide for the nature of the proceedings, the opportunities of hearing the party adversely affected and the nature of consequences flowing from the order of the concerned authority.

(2) The High Court will not substitute its own view on the merits in the place of an administrative or executive finding on facts. It will only see if the administrative authority or tribunal was really acting in exercise of the powers it has under the law or rule and in good faith and in accordance with accepted notions of fair play and natural justice.

(3) The statute is not likely to provide in so many words that the authority to act is required to act judicially ; that can only be inferred from the express provisions of the statute read along with the nature of the rights affected. A duty to act judicially may arise in widely different circumstances.

(4) Where, however, the statute is silent, the duty to act judicially may be inferred from the provisions of the statute or may be gathered from the cumulative effect of the nature of the rights affected, the manner of disposal provided, the objective criterion, to be adopted, the phraseology used and other indicia afforded by the statute.

(5) That if a statutory authority has power to do any act which will prejudicially affect the subject, then although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

(6) In quasi-judicial proceedings, the bed-rock of fair play and justice rest in the observance of the rules of natural justice.

(7) When the right to be affected is a natural or common law right of a person there is a presumption that the authority vested with the power to affect such right must act quasi-judicially.

(8) The question whether or not there is a duty to act judicially must be decided in each case in the light of the circumstances of the particular Case and the construction of the particular statute with the assistance of the general principles

laid down in the judicial decisions. The principles deducible from the various judicial decisions are:

(a) that an authority not being a Court in the ordinary sense, empowered by a statute to decide disputes between parties, there being nothing in the statute to the contrary, is under a duty to act judicially and the decision of the authority is a quasi-judicial act, and

(b) final determination by a statutory authority empowered to do any act which will prejudicially affect the subject will be a quasi-judicial act though there are no two parties and the contest "is between the authority and the subject, provided the statute requires the authority to act judicially.

22. In this case, having regard to the circumstances which happened, the manner in which the decision to with-draw was taken was peculiar, If after apse of nine years an acquisition process is going to be withdrawn, there should be a definite reason for it. In fact, the Land Acquisition Manual refers to normal cases wherein withdrawal is usually ordered. They are:

In the following cases withdrawal is usually ordered:

(1) If the amount of compensation to be paid prove to be much larger than that anticipated. This cannot be determined until the award has been fully framed and considered.

(2) If the owner insists u/s 49 (1) that the whole of his house or building or that the lands which on a reference made to the Court is declared to form part of his house or building which is not required for the purpose of the acquisition should be acquired, and it is decided that the cost involved is too high. If the acquisition is for a local authority or company the Collector should in such a case consult it to enable it to decide whether to exclude the whole of such house or building.

(3) When there are grave defects in the award which, cannot be cured except by withdrawal from the acquisition.

(4) If, on a consideration of the objections raised in the course of the enquiry u/s 5-A of the Act and the Collector's report thereon, the Government decide not to proceed with the acquisition.

When the area acquired or required is less than the area notified withdrawal is unnecessary provided the boundaries as notified hold good in respect of the reduced area.

The power to withdraw, therefore, has to be interpreted ejusdem generis with the specific cases mentioned above. In the instant case there is/absolutely no reason for withdrawing the lands from acquisition as it was unequivocally felt at all times that the lands were required for the public purpose. But when the State wanted to decide as it did, then it was aware that it was interfering with private lands. It, however, ignored such rights and on its own volition decided to the prejudice of the person owning such bundle of rights. In such circumstances it

could reasonably be assumed that the statute required the State to act judicially, but it did not act in accordance with the well-known principles referred to above while exercising its power as a quasi-judicial body though acting under the powers of a statute. They were in seisin of all the facts, but no fact or no relevant material is the foundation for the decision. They were equally aware of the damage to the petitioner's rights of enjoyment over the property having regard to the encouragement given from time to time to the trespassers into this land during the course of the land acquisition process. It is, therefore, clear that while acting judicially the impugned order was passed. The decision being the result of a quasi-judicial act, it has to fall because extraneous and irrelevant material entered into the computation while deciding to withdraw the land from acquisition. The dominant purpose appears to be to help the squatters to the utter prejudice of the petitioner who was not even consulted in the matter. There is a violation of the principles of natural justice as well when the State acted as it did.

23. The last aspect which remains for consideration is whether a writ of certiorari in the above circumstances ought to issue and the challenged order removed. I have held that there is an error apparent in the order. I expressed the view that the Government is estopped from resiling from their original assurance held out to the petitioner on which they acted upon that his land would be acquired for the accepted public purpose. The public purpose is still there. There is nothing on record to show that the officers of the Government or those bodies which were under their control were not for acquisition. A capricious exercise of power in Section 48 (1) is not contemplated, because it would not be exercise of power, but it would be an abuse of power. The entirety of the facts make out that the State knowing that it would impair private rights, wanted to encourage squatters as they were sympathetic towards them. As the decision, therefore, is based upon material which cannot enter into the discussion, the exercise of power in the manner stated above and in the circumstances cannot be accepted to be a proper exercise of statutory power. When there is such irrational and illegal exercise of statutory power, then the resultant order has to be removed by issuing the rule under Article 226 of the Constitution of India. In the above circumstances the Writ Petition is allowed and there will be no order as to costs.