
(1992) 04 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 1638 of 1984

Prakash Vasudev Deodhar and others

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 28-04-1992

Acts Referred:

Constitution of India, 1950 — Article 226

General Clauses Act, 1897 — Section 21

Land Acquisition Act, 1894 — Section 4, 4(1), 48, 48(1), 5A

Maharashtra Regional and Town Planning Act, 1966 — Section 113A, 114, 154, 159

Citation : (1993) MhLj 1768

Hon'ble Judges : M.L. Pendse, J;B.U. Wahane, J

Bench : Division Bench

Advocate : M.V. Paranjape, S.M. Paranjape and R.V. Pai, for the Appellant; V.S. Dighe, A.G.P. for Respondents Nos. 1 to 3, C.J. Sawant, R.M. Sawant for Respondent No. 4 and Deepak R. More for Respondents Nos. 5 to 7, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Pendse, J.—On February 3, 1970 the Commissioner, Bombay Division, Bombay published notification in accordance with provisions of section 4 of the Land Acquisition Act, 1894 on being satisfied that the lands specified in the schedule annexed to the notification are likely to be needed for a public purpose, viz. for the planned development and utilisation of the lands in the Trans Harbour, Panvel and Trans Thana Creek area for industrial, commercial and residential purposes. The lands referred to in the schedule cover 86 villages situated within the Districts of Thana and Kolaba. The schedule inter alia recites that all lands lying within the survey limits of the villages mentioned, excluding the lands occupied by Gaothan sites, lands already notified for acquisition, lands occupied by religious buildings, burial grounds etc. and lands belonging to the Central and State Governments and other statutory corporations are excluded from proposed acquisition. The schedule further recites that the lands within the

original municipal limits of Panvel Municipality are excluded, but not the lands which are included in the extended municipal limits and which admeasures about 814 Hectares and 88.63 Ares.

On March 20, 1971, the Government of Maharashtra on being satisfied that it is expedient in the public interest that the area adjoining city of Bombay should be developed as a site for the new town, published notification designating the area as the site for the proposed new town. The notification includes the area covered by the 86 villages. By a subsequent notification dated August 16, 1973 nine more villages situated within Thana and Kolaba Districts were also included. On March 20, 1971 the Government published notification constituting respondent No. 4 as a new town development authority for the purposes of acquiring, developing and disposing of lands in the area of the new town. Having regard to the complexity and magnitude of the work involved in the development of the area as the site for the new town, the time required for setting up new machinery for undertaking and completing such work of development and with a view to ensure that the work is undertaken and completed in the public interest with speed, the Government decided to carry out the work through agency of the corporation and that corporation created is known as City and Industrial Development Corporation of Maharashtra Limited. The Corporation is a Public Company registered under the provisions of the Companies Act and is a fully owned company of the State Government.

2. Section 113A of the Maharashtra Regional and Town Planning Act, (1966 MRTPA) confers power upon the State Government to acquire any land under the Land Acquisition Act within the area designated under the Act as the site of the new town, as well as any land adjacent to that area which is required for the purposes connected with the development of the new town. The power to acquire lands includes the acquisition which may have commenced before coming into force of the section. The lands are acquired by the State Government under the Land Acquisition Act and on such acquisition the lands vest in respondent No. 4 for the purpose of developing the area as the site for new town. In view of provisions of section 113A of the MRTPA, the lands proposed to be acquired by publication of notification u/s 4 of the Land Acquisition Act on February 3, 1970 endured for the benefit of respondent No. 4.

3. The petitioners are owners of land bearing Survey No. 109(I)(a) and (b) of village Panvel. Survey No. 109(I)(a) admeasures 1 Acre 29 Gunthas and 10 Annas, while Survey No. 109(I)(b) admeasures 7 Gunthas and 14 Annas. On the portion of these lands the petitioners have constructed a house, cattle shed, well and bathroom-cum-toilet. The area covered by the house property admeasures about 1760 sq. meters. In pursuance of the notification published u/s 4 of the Land Acquisition Act, the petitioners were served with notice u/s 4(1) of the Land Acquisition Act and the petitioners filed their objections. The objections were duly considered and enquiry held u/s 5A of the Land Acquisition Act and thereafter notification u/s 6 of the Act was published on December 28, 1972, by the

Commissioner, Bombay Division. The notification, inter alia, recites that the lands are needed for the planned development and utilisation in the Trans Harbour Panvel and Trans Thana Creek area for industrial, commercial and residential purposes. The notification u/s 6 of the Land Acquisition Act was followed by declaration u/s 7 and notices u/s 9 were duly served upon the petitioners on April 6, 1973. The petitioners filed their replies on July 3 and July 19, 1973 principally claiming that their lands are not liable to be acquired because the acquisition would deprive them of the shelter.

As several lands were proposed to be acquired for development of new town, respondent No. 4 had floated a scheme whereby the owners who would voluntarily surrender their lands were promised 80% compensation as an advance payment. Large number of owners opted for the scheme and voluntarily surrendered their lands and received advance compensation. The voluntary surrender of land was accepted in accordance with provisions of paragraphs 21 and 261 (a) of the Land Acquisition Manual. The petitioners offered to surrender the area of 1 Acre 20 Gunthas from Survey No. 109(1 Ha), and statement of petitioner No. 1 was accordingly recorded on February 20, 1974. The petitioners thereupon received 80% of the compensation as the advance amount. The petitioners gave an undertaking that they would not claim any right in the land surrendered. The possession of area of 1 Acre 20 Gunthas was handed over on February 27, 1974 and the Land Acquisition Officer, ultimately declared the award in respect of the area of 1 Acre 20 Gunthas on March 29, 1982.

4. On April 5, 1984, the petitioners filed the present petition under Article 226 of the Constitution of India challenging the acquisition proceedings in respect of the remaining area proposed to be acquired under the notification published u/s 6 of the Land Acquisition Act. It is the claim of the petitioners that Deputy Collector Niphadkar, who was the Land Acquisition Officer and Gokhale, an officer working with respondent No. 4, had approached the petitioners' family and had requested to surrender the land notified for acquisition. The petitioners claim that after discussion and negotiations the petitioners agreed to surrender 1 Acre 20 Gunthas on assurance that the remaining area, including the area on which the house stands, would be excluded or released from the acquisition. The petitioners claim that the negotiations were fruitful and the officers accepted the proposal and assured the petitioners that the remaining area would be excluded or withdrawn from the proposed acquisition. The petitioners claim that the assurance was not kept and after waiting for a considerable length of time the petitioners addressed letter dated September 30, 1974 and September 1, 1976 to respondent No. 4 seeking exclusion of the lands which were not surrendered. The petitioners claim that respondent No. 4 did not respond to the demand and ultimately letter dated September 15, 1976 was received from respondent No. 4 communicating that the lands cannot be released from acquisition. The petitioners claim that application was made to the Special Land Acquisition Officer on December 28, 1983 to release the lands and withdraw the acquisition in pursuance of the assurance given by the officers Niphadkar and Gokhale, but

the Land Acquisition Officer declined to pay any heed to the request and thereupon the petitioners had no option but to file petition and seek writ of mandamus for a declaration that the land admeasuring 1760 sq. meters stands released from acquisition. The petitioners are also seeking a writ to direct respondents Nos. 1 to 4 to release and exclude the area of 1760 sq. meters from acquisition and prevent the respondents from taking possession thereof. The petitioners claim that respondents Nos. 1 to 4 have acted in arbitrary, unreasonable and discriminatory manner and are guilty of legal mala fides in the manner in which the lands of the petitioners are threatened to be acquired.

The petitioners also claim that apart from the fact that there was an agreement between the petitioners and the respondents to release the land in dispute, it is the policy of the respondents not to acquire houses situated within the municipal limits and also houses contiguous to the municipal limits, provided the houses were constructed prior to February 4, 1970. The petitioners claim that the Deputy Secretary to the Government of Maharashtra, General Administration Department had addressed a letter dated April 20, 1971 to the Collector, Thana and Kolaba in that respect and the respondents are bound to give effect to that policy decision and exclude the land on which the petitioners have erected house.

5. Shri Paranjape, learned counsel appearing on behalf of the petitioners, raised three or four contentions to seek the relief sought in the petition. The first submission of the learned counsel is that there was an agreement between the petitioners and respondents 1 to 4 represented by Niphadkar, who was the Special Land Acquisition Officer at the relevant time and one Mr. Gokhale, an officer working with respondent No. 4. The agreement was that in case the petitioners surrendered an area of 1 Acre 20 Gunthas in pursuance of the notification published u/s 6 of the Land Acquisition Act then the respondents Nos. 1 to 4 shall withdraw or release the remaining area from the proposed acquisition. The learned counsel submitted that though there is no written agreement to that effect, an implied agreement can be spelt out from the steps taken by the petitioners as well as respondents Nos. 1 to 4. The learned Counsel urged that not only there was an agreement between the parties, but the same was acted upon and therefore, it is not permissible for respondents 1 to 4 to continue acquisition proceedings in respect of the lands which were not surrendered. The alleged agreement pleaded by the petitioners is denied by the respondents by filing return dated April 23, 1984 and sworn by Govind Ganpat Surve, Chief Lands and Survey Officer of respondent No. 4, and return sworn on June 29, 1984 by Shashikant Kashinath Kulkarni, Special Land Acquisition Officer. Both the returns specifically deny that any negotiations were carried out by Gokhale or Niphadkar or by any officer with the petitioners or any assurance was given to release or withdraw from acquisition the remaining area. The returns point out that such negotiations would be in breach of the statutory powers conferred upon the authorities. The returns also point out that there is intrinsic evidence to establish that the claim of the petitioners is entirely false and frivolous.

It is not possible to accede to the submission of Shri Paranjape that there was an implied agreement between the petitioners and respondents Nos. 1 to 4 to release or withdraw the land in excess of area of 1 Acre 20 Gunthas which was surrendered on February 27, 1974. Shri Paranjape urged that in the statement of petitioner No. 1, which was recorded on February 26, 1976, reference was made to the fact that in the area of about 9" Gunthas there is an existing house, a well and the house is occupied by the family members of the petitioners. The learned counsel further submitted that only area of 1 Acre 20 Gunthas was surrendered and the possession receipt also refers to the area of 1 Acre 20 Gunthas and not the balance of the land proposed to be acquired. It was further contended that the award is also for the area of 1 Acre 20 Gunthas and nowhere makes a reference that separate award will be passed in respect of the remaining area over which a house is standing. These circumstances, according to Shri Paranjape, are tell-tale circumstances to establish the existence of an agreement. It was also contended that the respondents did not care to file affidavit of either Niphadkar or Gokhale to deny the arrival of the agreement between the parties. We are unable to find any merit in the contention. The reliance upon the documents is entirely misconceived. It was open for the petitioners to voluntarily surrender the portion of the land proposed to be acquired and receive 80% compensation as advance payment. The petitioners chose to adopt that course and the statement of petitioner No. 1 nowhere makes reference to the alleged agreement that the remaining area will be released from acquisition. The possession receipt and the undertaking naturally refer to the area of 1 Acre 20 Gunthas and so also the award declared by the Land Acquisition Officer. The complaint of Shri Paranjape that the award in respect of area of] Acre 20 Gunthas makes no reference to the fact that separate award will be passed in respect of the remaining area as provided in respect of some other awards, to which our attention was invited, cannot lead to the conclusion that there was a concluded agreement between the petitioners and respondents 1 to 4 to release land in excess of area of 1 Acre 20 Gunthas. Shri Sawant, learned counsel appearing for respondent No. 4, is right in his submission that in case such an agreement had really come into existence then it is impossible that the petitioners will still request the Land Acquisition Officer to release the same in an application filed on December 28, 1983. Shri Sawant also wondered why the petitioners did not adopt any proceedings to enforce the agreement from the years 1974 to 1984. In our judgment, the uncorroborated claim of the petitioners claiming that there was an agreement to release the rest of the area from acquisition is nothing but a figment of imagination. It is true that affidavits of Niphadkar and Gokhale are not filed, but Shri Paranjape very fairly stated that Niphadkar had died during pendency of the petition.

6. Apart from our conclusion that the claim of the petitioners that there was an agreement is frivolous, the contention of Shri Sawant that it is not permissible for the Special Land Acquisition Officer to give such assurance in law for withdrawal of the land from acquisition, deserves acceptance. The learned

counsel submitted that the land cannot be released from acquisition after publication of section 6 notification without reference to the provisions of section 48 of the Land Acquisition Act. Section 48(1) of the Land Acquisition Act provides that the Government or the Commissioner shall be at liberty to withdraw or release from acquisition any land of which possession has not been taken. It is now well settled that the power to withdraw u/s 48 is available even after passing of the award, provided possession is not recovered. Shri Sawant submitted, and in our judgment, with considerable merit, that it is not open to exercise powers u/s 48 of the Act without publication of notification in the Official Gazette. The learned counsel urged that it is not left to any officer of the Government to determine whether land should be withdrawn from the acquisition and such a declaration is possible only at the behest of the Commissioner who had published notification u/s 4 and section 6 of the Land Acquisition Act, and the declaration must be published in the same manner as the earlier notifications u/s 4 and section 6 are published. Shri Paranjape on the other hand submitted that it is not necessary to exercise powers u/s 48 of the Land Acquisition Act because section 48 is not the sole repository of the power of withdrawal and such power can be gathered from the provisions of section 21 of the General Clauses Act. The learned counsel also submitted that section 48 does not prescribe the mode in which the withdrawal should be effected, and therefore, it is not necessary for the Government or the Commissioner to publish notification in the Official Gazette to declare the withdrawal and it is sufficient if any executive order is passed to that effect. Shri Paranjape made reference to Chapter X of the Manual of Land Acquisition for State of Maharashtra, and which deals with the subject of "withdrawals". Paragraph 303-B recites that the Land Acquisition Act does not prescribe any formality for withdrawing from acquisition u/s 48 and therefore mere cessation of proceedings is sufficient. It further recites that the formal declaration of withdrawal in the form of a Government resolution is not the statutory requirement, nor does Collector's action postulate issue of formal executive order. We are unable to accede to the submission of Shri Paranjape. The Supreme Court in the decision reported in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, , examined the question as to the powers of the State Government to withdraw the lands from acquisition. Mr. Justice Wanchoo, as he then was, while speaking for the Bench in paragraph 19 of the judgment and while dealing with contention that the only provision which deals with withdrawal from acquisition is section 48, observed:

In the first place, u/s 21 of the General Clauses Act, the power to issue a notification includes the power to rescind it. Therefore, it is always open to Government to rescind a notification u/s 4 or u/s 6, and withdrawal u/s 48(1) is not the only way in which a notification u/s 4 or section 6 can be brought to an end.... It seems that section 48 refers to the stage after the Collector has been asked to take order for acquisition u/s 7 and has issued notice u/s 9(1). It does not refer to the stage prior to the issue of the declaration u/s 6.

The decision of the Supreme Court clearly provides that while the right conferred

u/s 21 of the General Clauses Act can be exercised prior to the publication of the notification u/s 6, once section 6 notification is published and a declaration is made u/s 7 and notices u/s 9 are served, then it is not open to withdraw lands from the acquisition without resort to the powers u/s 48 of the Act. The submission of Shri Paranjape that even after publication of notification u/s 6 and service of notice u/s 9 it is open to withdraw lands from acquisition without reference to section 48 of the Land Acquisition Act cannot be accepted. Once notification u/s 6 is published and then if the Government desires to withdraw the land from acquisition, the right to seek compensation due for the damage suffered by the owner in consequence of notice u/s 9 accrues and the Government is bound to determine the amount in accordance with sub-section (2) of section 48 of the Land Acquisition Act. Till publication of notification u/s 6 and service of notice u/s 9, the right to claim compensation is not available. The submission of Shri Paranjape that the withdrawal of land from acquisition u/s 48 need not be by publication of notification in the Official Gazette also cannot be accepted. The contention that provisions of section 48 do not prescribe for a particular mode and the Manual of Land Acquisition gives guidelines to the Special Land Acquisition Officer providing that publication of notification is not required cannot be accepted. It is undoubtedly true that section 48 does not prescribe for a mode or the manner in which the lands can be withdrawn, but if the steps for acquisition of the lands are taken by following a particular procedure, then the same procedure must be followed for withdrawing what was put in motion. It is incumbent upon the Government to publish notification in the Official Gazette while exercising powers u/s 4 and section 6 of the Land Acquisition Act and once the proceedings have started after observance of the requisite mode, then it is mandatory for the Government to follow the same mode while withdrawing the land from acquisition. The Manual of Land Acquisition published in the State merely gives guidelines and such guidelines can never be the determining factor. In our judgment publication of notification while exercising powers u/s 48 is desirable to entitle the owner to claim compensation under sub-section (2) of section 48 of the Land Acquisition Act. It is also desirable that the people at large are made aware of the fact of withdrawal so as to enable them to deal with the lands. In our judgment, as in the present case section 6 notification was published on December 28, 1972 and section 9 notices were served on the petitioners on April 6, 1973 it was not open for the petitioners to claim that by an agreement reached with Niphadkar and Gokhale the land stands withdrawn from acquisition. Once notices were served u/s 9. it was not permissible for any officer to promise or direct withdrawal of land from acquisition and such withdrawal is permissible only if the Government or the Commissioner, who had published earlier notification u/s 4 and section 6 of the Act. had decided to withdraw and had made such a declaration by publication of notification in the Official Gazette. The first contention of the learned counsel therefore requires to be turned down.

7. Shri Paranjape then submitted that respondents Nos. 1 to 4 are guilty of

discriminatory treatment and have acted arbitrarily in releasing lands from acquisition of some owners in the area. Shri Paranjape submitted that respondents Nos. 1 to 4 are arbitrarily implementing acquisition project without application of mind and in support of the submission it was claimed with reference to paragraph 13B of the petition that certain lands of Platewell Industries at Kalambodhi and lands of Hendre Industries at Ambetkar were excluded after publication of section 6 notification. There is no merit in the submission, because when specifically asked as to whether the Government has published any notification indicating withdrawal u/s 48 of the Land Acquisition Act, the answer was in the negative. Shri Paranjape also submitted that respondent No. 4 had sanctioned proposals for exclusion of residential properties from acquisition in respect of Survey No. 316 which has two structures. Survey No. 286 which has six houses and Survey No. 230. The learned counsel pointed out the location of these survey numbers from the map annexed to the petition and the mere perusal establishes that these lands, about which the petitioners make complaint, are situated within the original municipal limits of Panvel, while the lands of the petitioners are outside the municipal limits. The notifications under sections 4 and 6 of Land Acquisition Act specifically exclude house properties situated within original limits of Panvel Municipality. The grievance of the petitioners therefore is without any merit. Shri Paranjape referred to the decision reported in *Surya Lal Yadav and Others Vs. State of U.P. and Another*, and the decision of the Supreme Court reported in *Union of India (UOI) and Others Vs. K.K. Chopra (Dead) by Lrs.*, in support of the submission that it is not open to give discriminatory treatment even while acquiring lands. The decisions referred to have no application whatsoever to the facts of the present case and therefore it is not necessary to set out the facts and the conclusions reached in those cases.

8. Shri Paranjape then contended that it is not permissible for the Land Acquisition Officer to pass awards piecemeal in respect of the lands of the petitioners and on that count also it must be held that the lands excluding] Acre 20 Gunthas which were surrendered stand released or even otherwise the Lands Acquisition Officer had no jurisdiction to pass award in respect of the remaining portion. In support of the submission reference was made to the decision reported in *Corporation of Calcutta Vs. Omeda Khatun Bewa, and State of Bihar and Another Vs. Tulsi Ram Tibriwala and Others*, but the reliance on these cases is entirely inappropriate. The provisions of the Land Acquisition Act were subsequently amended and the challenge to the validity of the amendment was turned down by the Supreme Court in the decision reported in AIR 1968 SC 1138, *Udai Ram Sharma and others vs. The Union of India and others*. The Supreme Court observed:

There is nothing arbitrary or irrational about the objects of the Act which are-

(a) to amend the Principal Act for the future by empowering the making of more than one declaration u/s 6;

(b) to validate completed acquisitions on the basis of more than one declaration under that section; and

(c) to authorise more than one declaration under the said section in cases where there is already in existence a notification u/s 4.

In view of the amendment of provisions of the Land Acquisition Act by Amendment and Short Title Validation Act, 1967, it is open for the Land Acquisition Officer to issue more than one notification u/s 6 and it is equally open to declare more than one award in respect of the lands proposed to be acquired in accordance with section 6 notification. The submission of Shri Paranjape overlooks the amendment of the Land Acquisition Act, which provides period of limitation for declaration of the award. The amendment to the Land Acquisition Act in the year 1967 makes the decisions of Calcutta and Patna High Courts clearly redundant. Shri Sawant referred to an unreported decision of the Division Bench of this Court in Writ Petition No. 1709 of 1979 delivered on August 7, 1982 and where the notification involved in the present case was also in question. The Division Bench observed that it is open for the Government to publish more than one notifications u/s 6 and it is equally open for the Land Acquisition Officer to pass separate awards. We are in respectful agreement with the conclusion of Division Bench. In these circumstances the contention of Shri Paranjape requires to be turned down.

9. Shri Paranjape next submitted that in any event the property in dispute in the present petition, that is an area of 1760 sq. meters cannot be acquired under provisions of the Land Acquisition Act in view of the policy decision taken by the State Government and reflected in the letter dated April 20, 1971 addressed to the Collector, Thana and Kolaba by the Deputy Secretary to the Government of Maharashtra, General Administration Department. The letter, inter alia, recites that village Gaothans in municipal limits have been excluded from land acquisition. The letter further states that considerable residential development has taken place beyond the municipal limits and the original Gaothans and therefore the Government has decided that:

(i) All houses contiguous to the existing gaothans and to the existing municipal limits constructed with or without the Collector's permission before 4-2-1970 may be excluded from acquisition; and

(ii) All hamlets containing not less than 10 households which have not been shown as gaothans in village records but shown as such on the village maps may be excluded from acquisition until such time as the occupants are provided with alternative accommodation.

The learned counsel submitted that the petitioners' house is within the municipal limits or in any event is contiguous to the existing municipal limits and was constructed prior to February 4, 1970, and therefore, it is not open for the respondents 1 to 4 to continue the acquisition proceedings and dispossess the petitioners. The submission was controverted by Shri Sawant by pointing out that

the State Government was not competent to issue the letter dated April 20, 1971 and interfere with the acquisition proceedings commenced under the Land Acquisition Act. Shri Sawant submitted that it is not permissible by executive fiat to defeat the proceedings adopted under statutory provisions. The learned counsel also contended that the proceedings under the Land Acquisition Act were commenced by the Commissioner of Bombay Division and it is not open by executive orders contained in the letters to direct the Collectors that as a policy decision all houses contiguous to the existing municipal limits automatically stand excluded. The learned counsel urged that powers u/s 48 for withdrawal of lands from acquisition can be exercised with reference to a particular land and it is not open by executive fiat to pass general orders. Shri Sawant also submitted that even assuming that the directions contained in the letter are binding and amount to withdrawal of the acquisition, still the land in dispute in the present petition does not fall within the conditions laid down in the letter, and therefore, the petitioners are not entitled to any relief.

We will examine the contention in two parts, the first as to whether the State Government can withdraw the land from acquisition by issuance of direction in the letter addressed to the Collector, and secondly, whether the conditions prescribed under the letter are satisfied in the case of the petitioners. Shri Paranjape submitted that the State Government is entitled to issue directions to respondent No. 4 in accordance with provisions of sections 114 and 154 of the Maharashtra Regional and Town Planning Act. Sub-section (2) of section 114, inter alia, provides that the State Government may give directions to any development authority for restricting the exercise by it of any of its powers under the Act or for requiring it to exercise those powers in any manner specified in the directions. Section 154 prescribes that every development authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act. The reliance on the provisions of sub-section (2) of section 114 and section 154 of MRTP Act is not accurate. The letter dated April 20, 1971 is not addressed to respondent No. 4, but to the Collectors of Thana and Kolaba Districts. The issue is not as to whether the Government can give instructions or directions to the authority constituted for setting up of the new township, but whether the instructions can be issued to the authorities constituted under the Land Acquisition Act and who are performing the statutory duties. It is not permissible for the State Government to regulate the exercise of statutory duties under provisions of the Land Acquisition Act by issuance of executive directions or instructions. That would clearly amount to interference with the statutory exercise and more so, if the instructions are not for furtherance of the object but for purposes de hors the Act. In this connection it would be appropriate to make reference to the decision of the Supreme Court reported in Bangalore Medical Trust Vs. B.S. Muddappa and others, . The Supreme Court observed that an exercise of power which is ultra vires the provisions in the Statute cannot be attempted to be resuscitated on general powers reserved in a Statute for its proper and effective

implementation. An illegality or any action contrary to law does not become in accordance with law because it is done at the behest of the Chief Executive of the State. The Supreme Court observed that no one is above law and in a democracy what prevails is law and rule and not the height of the person exercising the power. The Supreme Court in the decision reported in *Senior Superintendent of Post Offices, Allahabad and Others Vs. Izhar Hussain*, , observed:

A statutory rule cannot be modified or amended by executive instructions. A valid rule having some lacuna or gap can be supplemented by the executive instructions, but a statutory rule which is constitutionally invalid cannot be validated with the support of executive instructions.

The Supreme Court held that the instructions can only supplement and not supplant the rule. In the present case the Commissioner of Bombay Division in exercise of powers conferred under the Land Acquisition Act had published notifications in the official gazette u/s 4 and section 6 of the Land Acquisition Act. Section 6 notification was published on December 28, 1972 that is long after the letter dated April 20, 1971 was addressed to the Collectors. The notification u/s 6 was followed by declaration u/s 7 and service of notice u/s 9 on April 6, 1973. It is therefore obvious that the executive instructions issued by the State Government were not considered as binding by the authorities exercising statutory powers. Shri Paranjape submitted that the authorities were bound by the executive instructions, which are in a shape of guidelines as to which property should be acquired and which should be excluded. It was submitted that all properties, which fall within the compass of letter dated April 20, 1971 automatically stand withdrawn from acquisition, whatever may be the stage of the acquisition proceedings. It is impossible to accede to the submission. The proceedings undertaken under the Land Acquisition Act cannot be controlled nor the lands can be withdrawn by reference to such executive instructions. The manner of withdrawal of land at the behest of the Government after publication of section 6 notification is only by adopting steps u/s 48 of the Act. The submission of Shri Paranjape that after April 20, 1971 the right to acquire lands which satisfies the conditions set out in the letter is wiped out cannot be accepted. The right to acquire land is on the doctrine of eminent domain and the acquisition is carried out in accordance with the statutory provisions under the Land Acquisition Act. Once the Commissioner is satisfied that the lands are required for the public purpose and the fact that the need is for a public purpose is not in dispute, then the action of the Land Acquisition authorities cannot be regulated by reference to the executive instructions. In our judgment, the guidelines or directions given to the Collectors by letter dated April 20, 1971 have no legal sanction and are not enforceable. Shri Sawant therefore is right in his submission that the State Government was not competent to issue the guidelines and such instructions cannot bind the Land Acquisition authorities. The submission of Shri Paranjape that the land stands automatically withdrawn in view of the guidelines contained in the letter dated April 20, 1971 therefore

cannot be accepted.

10. Even assuming that the guidelines contained in the letter dated April 20, 1971 are binding on the land acquisition authorities, Shri Sawant submitted that the case of the petitioners does not satisfy the requirements set out in the letter, and consequently the land in dispute does not stand excluded from acquisition. Shri Paranjape on the other hand submitted that the house of the petitioners is within the municipal limits and in any event is contiguous to the existing municipal limits. It is not possible to accept the contention of the learned counsel. The schedule to the notification published u/s 4 of the Land Acquisition Act sets out the lands which are proposed to be acquired and the relevant portion reads as under:

Portion of Panvel Village specified in Schedule A of Government Notification, Urban Development, Public Health and Housing Department No. DTM-1260/43518-A dated 23rd September 1964 to the limits of Panvel Municipality under the said Notification; approximate area notified is 2013 Acres 25 Gunthas and 3 1/2 Annas i.e. 814 Hectares and 88.63 Ares.

This clearly establishes that the area excluded from the Panvel Village by the notification is that area which was covered by the original municipal limits and not the extended municipal limits. Shri Paranjape did not dispute that the lands in dispute are not situated within the original municipal limits of Panvel Municipality. It is therefore obvious that the lands of the petitioners were not excluded, but on the other hand included for the proposed acquisition. Shri Paranjape then submitted that the directions under the letter dated April 20, 1971 exclude from acquisition all houses contiguous to the existing municipal limits and therefore the lands of the petitioners stand excluded. The assumption of the learned counsel that the house of the petitioners is contiguous to the existing municipal limits is not correct. With reference to the map produced by the petitioners Shri Sawant submitted that the house of the petitioners is situated at the distance of half kilometer from the municipal limits, while Shri Paranjape submitted that it is at a distance of 500 sq. meters. The expression "contiguous" is extremely vague and the directions contained in the letter dated April 20, 1971 give arbitrary powers to the Collector to determine which house can be excluded. Taking into consideration the meaning of the expression "contiguous" in its common parlance, it is futile to suggest that the house situated at a distance of half kilometer can be considered as contiguous to the existing municipal limits. It is not in dispute that the petitioners' house was the sole construction in the area. In these circumstances the claim of respondent No. 4 that the petitioners' property does not attract the conditions for exclusion as prescribed for by the letter dated April 20, 1971 deserves acceptance. In our judgment, the petitioners are not entitled to a declaration that the lands stand excluded in view of the guidelines. The reference to the properties excluded made in the petition are those properties which are situated within the original limits of Panvel Municipality and those properties cannot be compared with the

property of the petitioners.

11. Shri Paranjape then submitted that the object of setting up the new township is to carry out the work of the development and it is wholly unnecessary for the State Government to acquire properties which are developed. The learned counsel wondered what purpose would be served by acquiring property on which there is a standing house. It was submitted that (he property of the petitioners is situated in a residential zone and ultimately the plots in the area will be disposed of by respondent No. 4 while developing the township. Shri Paranjape submitted that the development can continue without any obstruction even if the lands of the petitioners are excluded or withdrawn from the acquisition. Shri Sawant controverted the submission by pointing out that it is absolutely necessary for the State Government to acquire all the lands comprised in 95 villages which are situated partly in Thana District and partly in Raigad District. Shri Sawant submitted that the process of development is not only of immediate present but of a reasonable future period, and it is not possible for respondent No. 4 at this juncture to determine which lands will be required for purpose of orderly development of the township. Shri Sawant submitted that the respondents had taken decision to acquire all the lands in these 95 villages as notified under the Land Acquisition Act. The learned counsel pointed out that the respondents were fully conscious that the lands will be required to be disposed of and for that purpose have enacted that New Bombay Disposal of Lands Regulations, 1975 in exercise of powers conferred by Sub-clause (a) of Clause (1) of section 159 of the MRTTP Act.

The Regulations, inter alia, provide that the Corporation shall divide the lands vested in it into disposable plots having regard to their size and use and shall demarcate them accordingly. Chapter III of the Regulations enables the Corporation to dispose of the plots from time to time on lease on the conditions set out in the Regulations. The Corporation is executing lease for duration of 99 years and the lease is granted on payment of premium. Explanation to Regulation 3 provides that the declared premium shall mean the premium calculated at such rate or rates as may be determined by the Corporation in the months of January and July each year in respect of the lands with reference to the areas in which such lands are situated Shri Sawant submitted that on acquisition the respondent No. 4 is willing to give the land to the petitioners on lease on payment of premium. Shri Paranjape complained that the premium settled by the Corporation is extremely heavy and has no relation whatsoever to the compensation which will be payable for acquisition of properties under the Land Acquisition Act. Shri Sawant pointed out that the development of the new township follows what is known in the language of the town planning as the node pattern". The site for the new township is divided into about twenty nodes intended for development in a phased programme, and there will be gradual fusion of these nodes into a town eventually. The learned counsel pointed out that in every node the disposable component of lands hovers around 50% of its total expenses with the remaining 50% being devoted to the provision of the

physical and social infrastructure, such as roads, pavements, street lights, water works, sewerage etc. The cost of development is calculated with reference to such a node and not with reference to a village in a node, much less a specific plot of land. The node is reckoned as an unit in the calculation of costs and the cost for acquisition of all the lands in a node and other development is distributable in its totality over the disposable land. Shri Sawant is right in his submission that the premium is determined with reference to the amenities available to the land in a particular node. Shri Paranjape submitted that the petitioners are willing to contribute to the development charges, but respondent No. 4 cannot insist on acquiring petitioners' property and then fixing a premium which is extremely heavy. Shri Paranjape also submitted that the offer made by respondent No. 4 to the petitioners of an alternate plot in the residential locality and where the premium is settled at Rs. 95/- per sq. meter of the built-up area is not acceptable, because the area according to the petitioners is not suitable. We enquired from Shri Sawant as to how many houses are proposed to be acquired in the node in which the lands of the petitioners are situated, and it was pointed out that there are only 13 or 14 houses out of which four are already acquired and the owners of only one or two houses have instituted proceedings against the Corporation. It is not possible to suggest to respondent No. 4 to reduce the premium in the case of the petitioners as it would lay down a wrong precedent and it would seriously hamper the working of respondent No. 4 of setting up new township. It is not possible to take a sympathetic view only in the case of the petitioners by compelling the respondent No. 4 to reduce the premium amount. In our judgment, the action of respondents 1 to 4 in proceeding with the acquisition does not suffer from any infirmity or violates any of the provisions of the law and consequently the petitioners are not entitled to any relief.

12. Accordingly, petition fails and rule is discharged with costs. Shri Pai applies for continuation of interim relief. Prayer refused.