
(1978) 10 DEL CK 0004

In the Delhi High Court

Case No : Letter Patent Appeal No's. 114, 115, 116, 117, 118 of 1975 and 3 of 1976 and Civil Writ Appeal No. 1511 of 1974

P.S. Gill and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-10-1978

Acts Referred:

Citation : (1979) 16 DLT 266 : (1979) ILR Delhi 601 : (1979) RLR 497

Hon'ble Judges : T.V.R. Tatachari, J;S. Ranganathan, J

Bench : Division Bench

Advocate : G.S. Vohra, A.S. Puri, P.N. Lekhi, M.K. Garg, D.R. Dhamija, N.N. Goswami, P.R. Nanda, B.N. Lokur, Daljit Singh, S.C. Nanda, R.K. Khanna and Ram Paul, for the Appellant;

Judgement

S. Ranganathan, J.

(1) These six Letters Patent Appeals and Civil Writ can be disposed of by a common judgment, as they raise common issues arising out of a notification dated the 24th October, 1961 u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act") for the acquisition by the Government of about 16,000 acres of land situated in the village of Garhi Naraina which is situated within the limits of the Delhi Contonment (briefly referred to as "Cantt."). The public purpose specified in the notification was "planned development of Delhi".

(2) A declaration u/s 6 of the 1894 Act was issued on 7th December, 1966 in pursuance of the earlier notification u/s 4. The six appellants filed writ petitions in this Court challenging the above two notifications on various grounds. These petitions having been dismissed by Prithviraj.J. by his judgment dated 18th December, 1975 (reported in 1976 1 Delhi 375, the writ petitioners have preferred the Letter Patent Appeals.

(3) So far as the L. P. Appeals are concerned, the allegations and contentions of the writ petitioners and the replies of the respondents have been summarised in

he judgment of Prithiraj, J in paras 4 to 24 (See 1976 1 Delhi 379 and need not be repeated here.

(4) The lands of the petitioners in Cw 1511 of 1974 were the subject matter of a declaration u/s 6 dated 2nd January. 1969, in pursuance of the same notification u/s 4 dated 24th October, 1961. When this writ petition came to be heard by Avadh Behari, J., the learned Judge was not inclined to agree with the conclusions of Prithvi Raj, J. He set out at length his reasons for coming to a different conclusion in an order dated 25th January, 1978 but, since there was already a judgment of a Single Judge in the matter, he referred the case to a Division Bench proposing that it should be heard along with the Letters Patent Appeal from the judgment of Prithviraj, J. That is how these matters have come to be heard together by us and we have had the benefit of the opinions of the two learned judges of this Court in addition to detailed and elaborate arguments raised by a number of learned counsel appearing on the two sides. Factual Background In Cw 1511/74 :

(5) We shall begin by briefly setting out the material facts in Cw 1511/74 against the background of which Sri G. S. Vohra, who opened the case, elaborated his arguments. Petitioner No. 1, Dr. Gill, is a resident of Chandigarh and was previously in Government employment. The second respondent Balbir Singh, is doing business in West Germany and is mostly out of India. Dr. Gill, it is stated, "originally occupied" in 1948 field No. 1102 in the triangular part of village Garhi Naraina on Ring Road, which constitutes an integral part of Delhi Cantonment. It is stated that a building was constructed on the plot in 1949 for which the petitioner's father-in-law Hukam Chand obtained sanction from the Cantonment Board. Later Hukam Chand is stated to have sold 1000 Sq. yards of the plot to the second petitioner but the whole property has always been in the occupation of the first petitioner. The land had been included within the limits of the Cantt. by a notification dated 2-5-1942 u/s 4(3) of the Cantonments Act, 1924 (hereinafter referred to as "the 1924 Act"). On 4th December, 1962, notifications were issued by the Government of India under Ss. 3 and 7 of the Indian Works of defense Act 1903 Act (hereinafter referred to as "the 1903 Act") restricting the use and enjoyment of land lying within a distance of 500 yards from the crest of the outer parapet of Central Ordnance Depot, Delhi Cantt. in the Union Territory of Delhi and the petitioner's claim is that his land is also covered by this notification. It is stated that, in view of the predominant military interests in respect of the Cantt. lands an annual review is effected of all Government-owned as well as private lands and the Commanding Officer renders a certificate to the effect that the lands within the boundary of the Cantt. in his charge "are actually or potentially needed for purposes connected with the military, including discipline and training of, and amenities to, the troops.". The land of the petitioner was claimed by the Custodian of Evacuee Property under the provisions of the Administration of Evacuee Property Act/Displaced Persons (Compensation) Act. The petitioner thereupon entered into a litigation which lasted for about 15 years and ultimately in 1972 got the land released from the

Custodian and got the mutation effected in his favor. On 14-2-74, Dr. Gill entered into an agreement with the second petitioner for the sale of the property to the latter, received a substantial portion of the consideration and gave possession thereof to the second petitioner. At this stage, it is stated, the petitioners learnt to their utter surprise and dismay, that the Lieutenant Governor of the Union Territory of Delhi ("L.G.", for short) had taken acquisition proceedings u/s 4 of the 1894 Act in respect of the land for the purpose of planned development of Delhi and had followed it up by a declaration u/s 6 of the Act. It is contended that on a proper construction of the 1924 Act, the Delhi Development Act, 1957 (hereinafter referred to as "the 1957 Act") and in the light of the Interim General Plans (I.G.P.) and Master Plan (M.P.) drawn up for Delhi under the 1957 Act, the action taken by the authority was wholly without jurisdiction and hence null and void. It is prayed that the notifications should be quashed and the respondents - the Union of India, the L.G. The Delhi Development Authority (DDA) and the Land Acquisition Collector, Delhi should be restrained from proceeding further in the matter. On behalf of the respondents, a counter affidavit has been filed by Sri Krishan Pratap, Deputy Secretary (Land and Building), Delhi Administration, Delhi. The first thirteen pages of the affidavit are cyclostyled and are seen to repeat the same averments as were made in the Government's counter affidavits in other writ petitions (challenging certain earlier notifications for the same purpose) and which have been judicially noticed. In the remaining pages of the counter-affidavit, the contentions of the writ petitioner are met para by para and these will be referred to at appropriate places in the judgment to the extent necessary. The writ petitioners filed a rejoinder to the counter. It is however unnecessary to set out in detail the grounds of the petitioners' challenge or of the respondents' defense at this stage as it will be sufficient to deal with the specific arguments addressed to us by counsel. In the L. P. Appeals, not all the arguments addressed before the learned Single Judge have been repeated before us and we shall, Therefore, restrict ourselves to a consideration of the several contentions urged before us. Preliminary Objection

(6) At the outset, we have to consider a preliminary objection raised by Sri Goswami, appearing for the respondents in Cw 1511/74. It is stated by him that, though this objection had not been raised in the counter-affidavit filed in the writ petition, he had raised the point before the learned Single Judge. He points out that the notifications in respect of the lands of the petitioners under the L. A. Act had been issued in 1961 and 1969 but that the writ petition was filed only in November, 1974. He, Therefore, submits that the writ petition should be dismissed in limine on the ground of laches. He refers in this context the following observations of the Supreme Court in para 11 of the *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, :

" NOR do we think that the petitioners in the Writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration u/s 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no

reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under S. 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification undergrounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners."

(7) We are of opinion that this contention has no force. The petitioners have stated in the writ petition that the lands had been in the occupation of the petitioners since 1948. The land was, however, claimed by the Custodian of Evacuee Property to have vested in him and forced part of the compensation pool constituted under the Displaced Persons Act, 1954. The petitioners thereupon entered into a prolonged litigation and it was only on 30-12-1972 (vide Annexure "E" to the writ petition) that the land was released in favor of the petitioners by the custodian. Thereafter the petitioners had the mutation made in the revenue records and it was only then that the petitioners learnt that proceedings for acquisition of the land had been initiated. Apart from this, it is also pointed out that in the five years that had elapsed since the date of the notification u/s 6 and the filing of the writ petition, no change in circumstances had taken place and the petitioners continued to be in possession of the property. In these circumstances we uphold the contention of Sri Vohra that there is a satisfactory Explanation for the delay in coming to this Court and that the petition is not liable to be dismissed on the ground of laches and delay. Moreover, the delay has not prejudiced the interests of the Government or any others, as had happened in the *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, vide the observations in para 12:

"from the counter affidavit filed on behalf of the Government it is clear that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to Co-operative housing societies. To quash the notification at this stage would disturb the rights of third parties who are not before the Court."

That is not the position here. We, Therefore, overrule the preliminary objection raised by Sri Goswami. Effect Of Notification Under The 1903 Act

(8) A contention, based on the Indian Works of defense Act, is raised only by the petitioner in Cw 1511 of 1974. Though a reference has been made in para 7 of the Writ Petition to the 1903 Act and also to the notification u/s 7(c) of the Said Act (which has also been made Annexure "D" to the petition) the argument in the present form was not raised either in the writ petition or before the learned Judge. To understand and appreciate the argument, it is necessary first to refer to the salient provisions of the 1903 Act.

(9) The said Act was enacted "to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defense in order that such land may be kept free from building and other obstructions and for determining the amount of compensation to be made on account of such imposition". Section 3 of the Act in so far as is relevant, runs as follows : S. 3(1) Whenever it appears to the Central Government that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defense or of any site intended to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions, a declaration shall be made to that effect..... (2) (3) The said declaration shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions. Section 7 specifies the various types of restrictions that may be imposed which the Central Government may, in its discretion, attach to such land from and after the publication of the notice under S. 3. Clauses (a), (b) and (c) deal with the various types of restrictions that could be made applicable within the radius of 2000, 1000 and 500 yards respectively "from the crest of the outer parapet of the work". It is not necessary to set them on"; in detail. Briefly speaking, clause (a) prohibited within the radius of 2.000 yds- any variation in the ground level as well as the execution and maintenance of or additions or alterations to any building, wall or construction except with the written approval of the General Officer Commanding the District (GOC) ; it also prohibited the stocking, storage or accumulation of wood, earth, stone, brick, gravel, sand or any other material except that road material, manure and agricultural produce could be stocked with the GOC's written approval; and it also prohibited any survey operation except by a public servant permitted to do so by the Commanding Officer (CO), Clause (b) laid down the following restrictions within the radius of 1000 yds. in addition to those specified in clause (a) : No permanent wall, bank or construction could be erected or maintained without the written approval of the GOC and the planting etc. of live hedges, rows, clumps of trees, or orchards and addition or alterations thereto could not also be undertaken except with the approval of the GOC. Clause (c), which relates to a distance of 500 yards from the work of defense in question, provides that, within this area, "the restrictions enumerated in clauses (a) and (b) shall apply with the following additional limitation, namely:

" NO building or construction on the surface and no excavation, building or other construction below the surface shall be maintained or erected: Provided that, with the written approval of the C.O. and on such conditions as he may prescribe, a building or other construction on the surface may be maintained and open railings and dry brush-wood fences may be exempted from this prohibition."

The Act then proceeds to make provisions for the payment of compensation for the damages caused to any person by the imposition of these restrictions as well as the demolition of or damage caused to property belonging to him in efforts to secure conformity with the restrictions imposed but these provisions are not relevant for our present purposes.

(10) In the present case, there was a notification under S. 3 of the above Act by the Central Government declaring that "it is necessary to impose the restrictions specified in clause (c) of Section 7 of the Said Act upon the use and enjoyment of land lying within a distance of five hundred yards from the crest of the outer parapet of the Central Ordnance Depot, Delhi Cantt. in the Union Territory of Delhi, as is included within the boundaries shown in the sketch plan kept in the office of the Deputy Commissioner of Delhi, where it may be inspected". (Annexure "D" to the writ petition). The petitioners' land is said to fall within the said radius. Sri Vohra's contention is that the concept of development necessarily involves some excavation, addition, alteration or construction. For e.g., S. 2(d) of the 1957 Act defines "development" as follows :

"DEVELOPMENT" with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes redevelopment."

Thus, he says, there is a legal embargo on the development of the lands within this radius and so the petitioners' lands cannot be acquired for the purposes of development.

(11) Sri Goswami contests the correctness of the plea of the petitioners both on the facts and in law. He says, first, that the petitioners have not established that their land falls within the area covered by the notification (Annexure "D") and it is necessary to examine this contention.

(12) In para 7 of the Writ Petition, the petitioners stated :

" THAT the triangular portion of the village Garhi Naraina in question was included within the limits of Delhi Cantonment, as it was considered essential as a sanitary cordon as well as for the security, protection and future extension of the Central Ordnance Dept., Command Workhoip etc. which lay at the periphery of the Delhi Cantonment. For the same reasons, the Central Government in exercise of the powers conferred by S. 3 of the Indian Works of defense Act, 1903 imposed restrictions and prohibitions specified in clause (c) of Section 7 thereof, upon the use and enjoyment of the said triangular land, falling within a distance of five hundred yards from the crest of the outer parapet of the Central Ordnance Depot, Delhi Cantonment, in the Union Territory of Delhi. It is, Therefore, patent that the land comprising the said triangular portion of village Naraina serves certain essential public purpose in relation to functions for the quartering and training of troops and protection and preservation of valuable military installations and works i.e. the Central Ordnance Depot etc. It also provides ground for their future expansion."

The petitioners continued, in para 9, to state

" THE land in question of the petitioners being within the Delhi Cantonment since 1942 is, Therefore, already subject to the public purpose, as explained above

and cannot be acquired for any other public purpose, much less, for any public purpose other than for military requirements"

In paragraph 29 setting out the grounds of challenge sub-para (e) reads:

" BECAUSE the respondents have no jurisdiction, power or authority to proceed with acquisition of any land held for public purposes within the Delhi Cantonment, more particularly the lands subject to the restrictions under Indian Works of defense Act, 1903."

(13) The above extracts, taken in the full context of the other statements in paras 7 and 8 of the writ petition show that the substance of the petitioner's contention was that since the land was in a cantonment area and subject to certain restrictions in the interests of military installations, it was already subserving a public purpose and so could not be acquired for any other public purpose. The contention, in the form in which it is now urged, that development of the site would be contrary to the 1903 Act was not taken up in the writ petition. Nevertheless the basic fact that the petitioners' land fell within the area covered by the notification u/s 3 of the Act has been stated in the writ petition. The counter-affidavit of the respondents does not specifically deny the above allegation of the petitioner. It admits in para 3 that the land in dispute was included within the limits of Delhi Cantonment by the notification dated 2-5-1942. Then it proceeds :

" THAT in reply to paras 4, 5, 6 and 7 of the writ petition, it is submitted that the averments made therein pertain to the insurance of various notifications, provisions of Cantonment Act, 1924, and Indian Works of defense Act. 1903. But in so far as the land in dispute is concerned it is submitted that the same does not form an integral part of the Delhi Cantonment."

The plea that "the land in dispute does not form an integral part of the Delhi Cantonment" is then repeated, again and again, in paras 8, 13, 22 and 29(d). It is not quite clear what the respondent means by this plea, after the admission in para 3 that the land has been included in the Cantt. by a notification. Again in para 9. it is stated :

".....there is no military installation located in the vicinity of the land in question."

and a similar statement also occurs in para 29(c) ; but the specific averment of the petitioners that the land was covered by the notification under S. 3 of the 1903 Act has not been specifically denied. The petitioners then stated in their rejoinder (para 9) :

"PARA9 of the reply is denied. Amongst others, Central Ordnance Depot, Command Salvage Depot, 505 Base Workshop, Radar Station, Government accommodation for military personnel and a number of other installations are in close proximity of the land in dispute for the protection and preservation of which as well as for future expansion the land in question has been included and retained within the limits of Delhi Cantt. The same is subjected to the restrictions

imposed under the Indian Works of Defence Act, 1903. In no case can it be acquired for any other public purpose....."

(14) The truth appears to be that, though the petitioner referred to the 1903 Act and the notification there under, the significance of the restrictions thus imposed, as a basis for the present argument does not seem to have occurred to the petitioners then. At that stage, the petitioners were concentrating on the fact that the land was in the Cantt. area and seeking to make out that, consequently, it was immune & from acquisition, which is the basis of a separate contention which we shall deal with later. The respondents also did not attach much importance to the effect of the notification under the 1903 Act. The resultant position, however, is that the petitioners' averment that the land fell within the purview of the notification has not been specifically denied or shown to be wrong. We have, Therefore, to proceed on this basis and while, if we accept this argument of the petitioner. we may be inclined to grant the respondents an opportunity of satisfying themselves that this is so in fact, it would not be fair to deny the petitioner the right to raise this plea on the ground that he has not pleaded the factual position.

(15) Assuming then that the notification covers the land in question, the argument of Sri Goswami is that it does not preclude the acquisition proceedings. He says it is wrong for the petitioner to assume that buildings will be put up or excavations made on the land. Apart from the fact that, even such things can be done with the concurrence of the Gco or Cc (who are officers of the Central Government) we have also to take note of the provisions of Section 53(3) of the 1957 Act which runs :

"(3)Notwithstanding anything contained in as such other law (a) when permission for development in respect of any land has been obtained under this Act such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained. (b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has obtained."

Moreover, there is always the possibility that the development of this area may be done in conformity with the 1903 Act itself. For e.g. it may be continued to be kept as vacant, for strategic reasons, to secure the works of defense; or it may be used for construction of. quarters for military personnel and so on.

(16) We think that there in force in the contention urged on behalf of the respondent. A perusal of the Act and its provisions, for compensation etc. shown that the restrictions therein are intended to be imposed on owners and other persons interested in the land from so using or enjoying it as to come into conflict with the interests of the State. They cannot be read as imposing

restrictions on the Government itself in developing the land, particularly, in the context of a planned development of the metropolis. The Government may use the land in conformity with the restrictions imposed: if need be, the concurrence of the G.C.O. or C.O. can be obtained. Further the Government, which issued the notification, is also entitled to withdraw the notification if considered necessary or advisable, (vide Section 21 of the General Clauses Act, 1897 and Section. 38 of the 1903 Act) The land may also continue to be kept as such reserved for the future development of the works of defense. It cannot also be assumed or presumed that the development will necessarily involve contravention of the restrictions now in force. We are, Therefore, unable to see any obstacle in the path of the Government notifying the acquisition of these lands, merely because they are covered by the notification under the 1903 Act.

(17) Sri Goswami pointed out that the notification under the 1903 Act (Annexure D) is dated 4th December, 1962 whereas the notification u/s 4 of the 1894 Act had been issued much earlier, in October 1961. This does not help him because the declaration u/s 6 was on 2-1-69 (Annexure "G" to the petition) and the L.G. is to be satisfied before the declaration is issued that the land is required for the public purpose set out therein viz. "planned development of Delhi". However, since we are of the view, for the reasons discussed above, that the restrictions under the 1903 Act are no bar to the action taken by the Government, this contention of the petitioners based on the 1903 Act fails. Can Cantonment Land Be Acquired Under The 1894 Act Read With The 1957 Act ?

(18) The next contention, which is common to the writ petitions as well as the Letters Patent Appeals, is that since the acquired lands are situated within the area of the Delhi Cantt., they can b.e developed only under the Cantonments Act, 1924, which contains ample provisions in that regard and that the provisions of the 1894 Act read with the Delhi Development Act, 1957 cannot be invoked for the purpose.

(19) The nature of a Cantonment was considered by the Federal Court in AIR 1939 58 (Federal Court) :

"A CANTONMENT is a place in or in the vicinity of which any of His Majesty's regular forces or regular Air forces are quartered and which has been declared by notification to be a cantonment for the purposes of the Acts in that behalf for the time being in force. The administration of cantonment areas, almost from their first establishment has been for obvious military reasons subject to special regulations. The first general Cantonments Act, a consolidating and amending measures, was passed in 1889 and repealed a large number of existing Acts and Regulations. The Act of 1889 was followed by another Consolidating and Amending Act in 1910 (Act 15 of 1910), and later by the very elaborate Code of 1924, an Act of 292 Sections and six schedules (Act 2 of 1924), which superseded all previous legislation and is, though it has not itself escaped amendment, the principal Act relating to the subject which is now in force."

It may be mentioned here that, under the Constitution, the topic of Cantonment figures as Entry 3 in List 1 of the Seventh Schedule, which reads:

"3.Delimitation of cantonment areas, local self-government in such areas, the constitution and powers, within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas."

(20) The Cantonments Act, 1924 was enacted to consolidate and amend the law relating to the administration of Cantonments. Section 3 enables the Central Government to notify any place or places in which any part of the armed forces is quartered or in the vicinity thereof and required for the service of such forces as a cantonment. It can also denotify a cantonment (S. 3) or expand or reduce its limits (S. 4). The administration of the Cantt. is vested in a cantonment Board and the Executive Officer (Chapter III). The Cantonments Board is a body corporate with power to acquire and hold property (S. 11). It has the same powers of imposing a tax in a cantonment as a municipality has in the State wherein the Cantonment is situated. (Section 60 and Chapter V). The Board is in charge of a Cantonment Fund to which are credited all sums received by or on behalf of the Board. (S. 106 and 107). Section 108 deals with the property of the Board and provides :

108.Property-Subject to any special reservation made by the (Central Government), all property of the nature hereinafter in the section specified which has been acquired or provided or is maintained by a Board shall vest in and belong to that Board and shall be under its direction, management and control, that is to say : (a) all markets, slaughter-houses, manure and night-soil depots, and buildings of every description ; (b) all waterworks for the supply, storage or distribution of water for public purposes and all bridges, buildings, engines, materials and things connected therewith or appertaining thereto ; (c) all sewers, drains, culverts and water-courses and all works materials and things appertaining thereto ; (d) all dust, dirt, dung, ashes, refuse, animals matter, filth and rubbish of every kind, and dead bodies of animals collected by the Board from streets, houses privies, sewers, cesspools, or elsewhere, or deposited in places appointed by the Board for such purpose; (e) all lamps and lampposts and apparatus connected therewith of appertaining thereto; (f) all land or other property transferred to the Board by the Central or a State Government or by gift, purchase or otherwise for local public purposes; and (g) all streets and the pavements, stones and other materials thereof, and also all trees, erections, materials, implements, and things existing on or appearing to streets.

Section 109 provides that the Cantonment Fund and all property vested in a Board shall be applied for the purpose for which powers are conferred, or duties or obligations are imposed upon the Board. Then comes Section 110 upon which considerable reliance has been placed for the petitioners/appellants. It reads : Acquisition of immovable property When there is any hindrance to the permanent or temporary acquisition upon payment of any land required by a Board for the

purposes of this Act, the (Central Government) may, at the request of the Board, procure the acquisition thereof under the provisions of the land Acquisition Act, 1894 and on payment by the Board of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Board." Section 111 enables the Central Government to make rules, consistent with the Act to provide, inter alia, for conditions on which the Board can acquire or dispose of property. Next comes the important Section 116 which specified the several obligatory duties of the Board. It runs: Duties of Board It shall be the duty of every Board, so far as the funds at its disposal permit, to make reasonable provision within the cantonment for-

(A)lighting streets and other public places; (b) watering streets and other public places; (c) cleansing streets, public places and drains, abating nuisances and removing noxious vegetation ; (d) regulating offensive, dangerous or obnoxious trades, calling and practices: (e) removing, on the ground of public safety, health or convenience, undesirable obstructions and projections in streets and other public places ; (f) securing or removing dangerous buildings and places ; (g) acquiring, maintaining, changing and regulating places for the disposal of the dead ; (h) constructing, altering and maintaining streets, culverts, markets, slaughter-houses, latrines, privies, urinals, drains, drainage works and sewerage works ; (i) planting and maintaining trees on roadsides and other public places; (j) providing or arranging for a sufficient supply of pure and wholesome water, where such supply does not exist, guarding from pollution water used for human consumption, and preventing polluted water from being so used ; (k) registering births and deaths ; (m) establishing and maintaining or supporting public hospitals and dispensaries, and providing public medical relief; (n) establishing and maintaining or assisting primary schools; (o) rendering assistance in extinguishing fires, and protecting life and property when fires occur ; (p) maintaining and developing the value of property vested in, or entrusted to the management of, the Board ; and (q) fulfilling any other obligation imposed upon it by or under this Act or any other law for the time being in force.

Section 117 outlines certain discretionary functions of the Board. This section runs: Discretionary functions of Board A Board may, within the cantonment, make provision for :

(A)laying out in areas, whether previously built upon or not, new streets, and acquiring land for that purpose and for the construction of buildings, and compounds of buildings, to abut on such streets ; (b) constructing, establishing or maintaining, public parks, gardens, offices, dairies, bathing or washing places, drinking fountains, tanks, wells and other works of public utility; (c) reclaiming unhealthy localities ; (d) furthering educational objects by measures other than the establishment and maintenance of primary schools ; (e) taking a census and granting rewards for information which may tend to secure the correct registration of vital statistics; (f) making a survey ; (g) giving relief on the

occurrence of local epidemics by the establishment or maintenance of relief works or otherwise; (h) securing or assisting to secure suitable places for the carrying on of any offensive, dangerous or obnoxious trade, calling or occupation ; (i) establishing and maintaining a farm or other place for the disposal of sewage ; (j) constructing, subsidising or guaranteeing tramways or other means of locomotion, and electric lighting or electric power works ; or (k) adopting any measure, other than a measure specified in section 116 or in the foregoing provisions of this section, likely to promote the safety, health or convenience of the inhabitants of the cantonments ; (2) A Board may, either within or outside the cantonment, make provisions for the doing of anything on which expenditure is declared by the Central Government, or by the Board with the sanction of the Central Government, to be an appropriate charge on the cantonment fund."

Then follow the detailed provisions as to the civic administration of the Cantonment. Chapter IX sets out rules for public safety and suppression of nuisances; Chapter X relates to sanitation and the prevention and treatment of diseases; Chapter XI vests the Board with control over constructions of buildings, streets, boundaries, trees etc. and confers a power to frame bye-laws as well (S. 186). Chapter XII relates to markets, slaughter-houses, trades and occupations. Chapter XIII deals with water supply, drainage and lighting; Chapter XIV contains provisions for removal and exclusion of disorderly persons from the area and for suppression of sexual immorality. Chapter XV and Ch. XVII make procedural and supplementary provisions. Ch. XVI (Sections 280 and 281) confer powers (a) on the Central Government to frame rules and (b) on the Board to frame bye-laws, for various purposes.

(21) Under Sections 111 and 280 of the above Act, the Central Government framed the Cantonment Property Rules, 1925 and the Cantonment Land Administration Rules, 1937. The following are the salient ones among the 1925 rules : a register is to be maintained of all property, movable and immovable vesting in and belonging to the Board (rule 3); the Board may purchase or take on lease any immovable property (other than property vested in the Government) that may be required "for an immediate and definite purpose connected with the administration of the Cantonment" (Rule 4), in making an application to the Central Government under S. 110, the Board shall state clearly the necessity for the acquisition and submit an estimate of the compensation to be paid and revenue to be remitted; the Board can apply to the Central Government for a grant to it of land vested in the latter (Rule 6); and the Board shall not transfer any immovable property to any person by way of sale, mortgage or exchange without the approval of the Central Government (Rule 7) but leases can be given subject to certain terms and conditions (Rule 8). Among the 1937 rules, the following have been referred to : - Rule 3 : A General Land Register of all land in the Cantonment is to be prepared and maintained by the Military Estates Officer (MEO) and cannot be altered without previous sanction of the Central Government. Rules 4 to 6 Land in the Cantonment which is vested in

the Government is divided into two classes : Class A land which is required or reserved for specific military purposes and Class B land which is not so required or reserved, but is retained in the Cantonment for the effective discharge of the Government's duties in respect of military administration, Land vested in the Board u/s 108 of the Act is called "C" class land. Class A is further sub-divided into classes A(1) and (2) and class B into classes B(1), B(2), B(3) and B(4). Class B(3) relates to land held by any private person under the rules subject to conditions under which the Government reserve the proprietary rights in the soil. Rule 7 : No alteration in the classification can be made except with the approval of the Central Government: only lands in Class B(4) may be transferred to class B(3) by the MEO. Rule 9: entrusts the management of the various classes of lands to the Meo, to the Department of the Administration or the State Government occupying the land or the Cantonment Board. Rules 10 41 : provide for the rules of administration of the above lands by the MEO. Rules 43 to 47 : provide for the rules of administration of lands entrusted to the Board. Rules 48 and 49 : Confer powers of entry and inspection on the MEO.

(22) Relying on these provisions, the argument is that the 1924 Act is a complete and self-contained code in relation to Cantonments It makes exhaustive provisions in regard to lands within the Cantt. area. By the very fact that they are lands in the occupation of the armed forces or lands in the vicinity thereof which are required for the service of such forces, they serve a public purpose. The Act vests wide powers in the Board to take all necessary steps for the development of these areas. This can be done not only by restricting constructions, laying out streets, sewers, lighting and the like but also by having land acquired with the aid of the Government where the Board is of opinion that such land is required by it for the purposes of the Act. The argument, Therefore, is that development, planned or otherwise. in the Cantt. area can be done only by the Board and, if land is to be acquired for the purpose, it can be done by the Central Government under the 1894 Act and only at the request of the Cantt. Board. It is not the respondent's case that there has been any such request so, the acquisition cannot be done, as has been done here by the Liutenant Governor acting under the 1894 Act read with the 1957 Act. The Dda cannot seek the acquisition of lands in the Cantonment for purposes of development.

(23) We agree with Prithviraj-J. that this contention cannot be upheld for the reasons set out by the learned Judge Tribhuvan Nath Bhargava Vs. Union of India and Others, . As we shall discuss later in relation to another contention of the petitioners, the concept of planned development of Delhi is of a much wider amplitude and deeper content than mere realignment of roads, restriction on construction and provision of civic amenities. Metropolitan cities all over the world had grown so rapidly and enromoualy beyond their original boundaries as to call for large scale planning of not only the cities proper but of contiguous areas as well for their proper development. Planning bodies have been charged with the task of planning layouts for suburban areas in accordance with modern standards. Such a gargantuan task of development needs a potent statutory

sanction or its implementation and the 1957 Act, the provisions of which we shall discuss later in detail, is the instrument by means of which the ideal of a more beautiful and well planned greater Delhi is to be translated into reality. It contemplates wholesale acquisition and distribution of land, with or without development, in such manner as to ensure the desired objectives. It is impractical and untenable to suggest that the provisions of the 1924 Act are adequate for this purpose. That Act was merely envisaged as an act to regulate local administration in the Cantt. Its provisions are, in most respects, *pari materia* with those of other Municipal Acts like the Delhi Municipal Corporation Act and the Punjab Municipal Act. They naturally provide wide powers to these local authorities to efficiently discharge their civic functions, These also include certain powers to acquire and manage property. The 1937 rules relate only to the lands the ownership of which vests in the Government. Section 110, which empowers the Cantt. Board to move for acquisition of land, confers a very limited power. Normally, where the Board requires land for its purposes, it should acquire such land by the normal process of negotiations for purchase, lease, gift or grant from Government. Rule 4 of the 1925 rules shows that purchases or leases of immovable property are permitted by the Board only where they are required for an immediate and definite purpose connected with the administration of the Cantt. Section 110 is only intended to remove hurdles in this process. Where the Board experiences an obstruction or impediment it can move the Central Government for acquisition and on acquisition, the land will vest in the Board. Section 117 confers certain powers on the Board which include the acquisition of land for the purpose of laying out new streets and for the construction of buildings and compounds to be situated on such streets. The language of this section is seemingly wider. But i

(24) Sri Lekhi raised a legal objection that the provisions of the 1957 Act could not override the provisions of the 1924 Act for two reasons. He argued that the 1957 Act is a general Act which applied to the whole of the Union Territory whereas the 1924 Act is a special Act applicable only to the Cantt. area and so the special Act will override the general Act. He also made the point that the 1957 Act was passed by Parliament in relation to an entry in the List II in the Seventh Schedule to the Constitution, acting as a legislative organ for the Union Territory of Delhi and so it should be considered to be of the same status as an Act of a State Legislature. It could not Therefore, prevail against the 1924 Act which was an Act of the Central Legislature on a subject now covered by Entry 3 of list I in the Seventh Schedule. In support of the point he relied on the decision of the Mysore High Court in *Chamu Nemappa Gotadhi Vs. Nesarikar and others* 1971 R.C.R. 426 . It was also sought to be made out that the 1957 Act could not apply to the Cantonment area in the absence of a notification or legislation to that effect.

(25) Before dealing with the above arguments, it is necessary to clarify certain points, (a) In the present cases, the acquisition proceedings have been initiated under the 1894 Act by the L.G. The purpose is the planned development of Delhi.

The counter-affidavit in Cw 1511/74 does not clearly state at whose request these proceedings were initiated but the tenor of the counter-affidavit filed by the Dda in the writ petition decided by Prithviraj-J, would seem to be the stand that the purpose was the planned development of Delhi as envisaged in S. 15 of the 1957 Act- Now S. 15(1) of the 1957 Act originally ran as follows :

" IF in the opinion of the Central Government any land is required for the purpose of development, or for any other purpose, under this Act, the Central Government may acquire such land by publishing in the official gazette a notice specifying the particular purpose for which such land is required and stating that the Central Government. has decided to acquire the land in pursuance of this section."

Section 15(2) to (7) laid down the procedure for acquisition. Section 16 to 20, which followed, specified the procedure for determination of compensation for such acquisition. Then, by Act 56 of 1963, S. 15 was amended, retrospectively, to read as follows :

"15(1)If in the opinion of Central Government, any land is required for the purpose of development, or for any other purpose under this Act, the Central Government may acquire such land under the provisions of the Land Acquisition Act, 1894. (2) Where any land has been acquired by the Central Government, that Government may after it has taken possession of the land, transfer the land to the Authority or any local authority for the purpose for which the land has been, acquired or payment by the Authority or local authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition."

and Section 16 to 20 were omitted, also retrospectively. An argument was, Therefore, raised before Prithviraj, J. to the effect that land for the purpose of development could be acquired only under the 1957 Act and that too by the Central Government and that the L.G. could not do it by invoking independently the provisions of the 1894 Act. It was argued that to this extent the 1894 Act must be deemed to have been repealed by implication in so far as its operation in Delhi is concerned. This contention was repelled by the learned Judge (vide paras 38 to 62 at pages 392 to 400 of 2nd 1976 (1) Delhi. It was held that there was no inconsistency between the two acts and that it was open to the Central Government to acquire lands under either. This conclusion was arrived at in the light of the decisions of the Supreme Court and of this Court referred to in the above paragraphs .It was perhaps because the issue was thus well settled that this point was not raised before us by counsel. Even if it had been, we would have repelled it for the reasons elaborately discussed by Prithviraj, J. (b) It was not contended before us that the 1894 and 1957 Acts are not applicable to the Delhi Cantt. area The former has application throughout the territory of India. S. 1(2) of the letter extends its operation "to the whole of the Union Territory of Delhi". This expression without doubt includes the area of the Cantt. This has been clearly explained by Prithviraj-J. *Tribhuvan Nath Bhargava Vs. Union of*

India and Others, . As we said, there was no contest on this issue before us. (c) As explained in subpara (a) above, the proceedings in this case have been taken under the 1894 Act. The said Act applies to the whole territory of Delhi. Under the said Act, lands can be acquired for a public purpose. If planned development is a public purpose, then certainly the acquisition would seem to be in order. This conclusion is, however, sought to be contested on two grounds : (i) For acquisition of lands for development in a Cantonment, resort should be had to S. 110 of the 1924 Act and not the 1894 Act. This argument is liable to be rejected for the same reasons as the argument that for purposes of development under the 1957 Act, resort could not be had to the 1894 Act discussed under (a) above. (ii) After the 1957 Act was introduced development in the Union Territory is not possible except under provisions of the Said Act and even if acquisition for development is permissible under the 1894 Act, it cannot be so availed of if the 1957 Act has no application to the Cantonment area. It is as a result of this contention that the arguments of Sri Lekhi as to the applicability of the 1957 Act to the Cantonment area become material and have now to be discussed.

(26) Now, coming to the contentions of Sri Lekhi, can it be said that the provisions of the 1924 Act override provisions of the 1957 Act ? The answer to this question can only be in the negative. Assuming that these two Acts are inconsistent with each other and operate in the same field and the doctrine of implied repeal is to be invoked, the result would be that the later 1957 Act should be deemed to impliedly repeal the earlier provisions of the 1924 Act. But in our opinion no inconsistency or conflict arises at all. We have already pointed out that the provisions of the 1924 Act do not envisage acquisition of property and its development in a comprehensive manner. It is only the 1957 Act that deals with this situation. The Acts do not Therefore operate inconsistently in the field of acquisition for development purposes and so the question of one of them repealing or overriding the other does not arise. Just as the acquisition, even for purpose of the Development of the 1957 Act can be made directly under the 1894 Act, so the acquisition for purposes of the 1924 Act can also be done under the 1894 Act directly. *Tribhuvan Nath Bhargava Vs. Union of India and Others*, it has been pointed out that the 1894 Act is a general Act having operation throughout India whereas the 1957 Act is a special Act the operation of which is confined to the Union Territory of Delhi. Yet, it was held -and as we have pointed out above, this has not been and cannot be disputed the two Acts could stand together and resort could be had to the 1894 Act, even in the Union Territory of Delhi. On the same principle the general 1957 Act and special 1924 Act must be read harmoniously and allowed to stand together. This is more so. because both the Acts are special Acts in their own way. The 1924 Act is a special act in that it provides for a special basis of administration for the Cantonment Area. On the other hand, this area forms part of the Union Territory and the 1957 Act is a special enactment to enable a planned development of the whole of the Union Territory.

(27) The second argument of Sri Lekhi is based on the distinction that the 1924

Act is legislation under the Union List while the 1957 Act is a legislation under the State List. He attempted to press into service the decision of the Mysore High Court in *Chamu Vs. Nesarikar*. 1971 R.C.R. 426 in support of this argument. That was a case where the Mysore Legislature made a law in regard to the control of rents within a Cantonment area. This was declared incompetent on the ground that the pith and substance of the Legislation fell within the scope of Entry 3 of List I of the Seventh Schedule in regard to which Parliament alone could legislate. This is of no assistance in the present case. The legislation here clearly falls within the purview of List 2 of the Seventh Schedule and is within the competence of the legislature that enacted it. That apart, in the case of a union territory this distinction between an Act of Parliament and an Act of the State Legislature is not of any relevance or significance. It is clear from the provisions of Article 246(1), (2) and (4) of the Constitution that, in, respect of a union territory. Parliament has power to make laws with respect to any of the matters enumerated in any of the Lists in the Seventh Schedule and there is no constitutional or other basis for a distinction such as is sought to be made out by Sri Lekhi.

(28) The third argument of Shri Lekhi also appears to us to be without force. The legislative sanction is there because the 1957 Act is specially enacted to operate in the whole of the Union Territory which includes the Cantt. When the legislation is clear the question of a notification extending the legislation by notification to Cantonment area does not arise. It had been pointed out before Prithviraj, J (para 35 on p. 390 of the 2nd 1976-1 Delhi) that when it became necessary to extend Rent Control Legislation this was done by a special enactment instead of a mere extension, by notification, of the law on the subject which was in force in the Union Territory. But, here, the 1957 Act is specially enacted to cover the whole of the Union Territory and no reason has been furnished to say that it should not be applied to the Cantonment. Section 5 of the 1924 Act which provides for the automatic application of laws in force in the Cantonment to any new area that may be included in the Cantonment is not relevant in this context and there is nothing else in the said Act which precludes the application of any law enacted by a competent legislature for the whole Union Territory from applying to the Cantonment area.

(29) In this context Sri Lokur invited our attention to S. 53(2) of the 1957 Act. In so far as it is relevant for our present purpose, this Sub-Section runs :

" THE provisions of this Act and the rules and regulations made there under shall have effect notwithstanding anything inconsistent therewith contained in any other Law."

This also supports the view, that even if one should come to the conclusion that S. 110 of the 1924 Act is inconsistent with the 1957 Act, it is the latter, that would prevail. On behalf of the petitioners/appellants reference was invited to the proviso to Section 6 of the 1957 Act which reads:

"PROVIDED that save as provided in this Act nothing contained in this Act shall be construed as authorising the disregard by the Authority of any land or the time being in force."

This is not helpful to them because the underlined words clearly show that S. 53(2) has overriding effect over the said proviso.

(30) For the above reasons, we have come to the conclusion that the contentions seeking to exclude the Cantonment area from the purview of the 1957 Act have no force and should be rejected. Development Of Cantonment Is It A "PUBLIC PURPOSE"

(31) By far the most important contention raised on behalf of the petitioners/appellants, which has also found favor with Avadh Behari J., is that the expression "planned development" has no content or meaning vis-a-vis the cantonment area and hence it cannot be said that the land is being required for a public purpose. The argument is built up on the following stages :

(i) Planned development of Delhi means the development of Delhi in accordance with the provisions of the 1957 Act. (ii) The said Act envisages the survey and preparation of a Master Plan and various zonal plans setting out the areas intended to be developed, the zones into which they are to be divided and the uses to which the lands in the various zones should be restricted. (iii) In accordance with the Act, the I.G.P. and the M.P. have been prepared but they have not envisaged any development of Delhi Cantt; rather they considered it to be outside their planning jurisdiction. This means there is no plan for the development of Cantt. area. The purpose of the acquisition is Therefore non-existent. (iv) The plans annexed to the I.G.P. and M.P. show that the use to which the lands in question are to be put is left undetermined; this being so, the purpose of the acquisition is no purpose at all and is at least vague and uncertain. (v) In any event, the purpose of the acquisition has not been sufficiently particularised as to make it possible for persons interested in the lands sought to be acquired to put forward their tangible and concrete objections to the acquisition.

(32) Before proceeding to discuss these contentions, it is necessary to set out, first, the relevant provisions of the 1957 Act. The Delhi Development Act (61 of) 1957 is an Act to provide "for the development of Delhi according to plan and for matters ancillary thereto". It came into force on 30-12-1957 and "extends to the whole of the Union Territory of Delhi" (Sec. 1). We think the relevant operative portions of the Act can be considered in three parts :

(i) As soon as may be after the commencement of the Act, the Central Government is to constitute, by Gazette Notification in the manner set out, an Authority to be known as Delhi Development Authority (D.D.A.), a body corporate with power to acquire, hold and dispose of property (Section 3 and 4). The body functions under the supervision of the Central Government (Sec. 41). The object of the Authority shall be: "to promote and secure the development of

Delhi according to plan and for that purpose the authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of Water and Electricity, disposal and sewage and other services and generally to do anything necessary or expedient for purpose of such development and for purposes incidental thereto" (Sec. 6).

"Development" is defined in Section 2(d) and has to be read in conjunction with the inclusive definition of "amenity" "building", "building operations" and "engineering operations" contained in the section. How is the objective to be achieved ? The first step is the preparation with the help of the Advisory Council and Committees constituted by it under Sections 5 and 5A, of the Master Plan (M. P.) for Delhi as set out in Section 7 :

7.(1) The Authority shall, as soon as may carry out a civic survey of, and prepare a master plan for, Delhi. (2) The master Plan shall (a) define the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out ; and (b) serve as a basic pattern of framework within which the zonal development plans of the various zones may be prepared. (3) The master plan may provide for any other matter which is necessary for the proper development of Delhi."

This is obviously the broad outline and basic pattern of framework within which development plans for the various zones are to be prepared says Section 8:

"S. 8(1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development plan for each of the zones into which Delhi may be divided."

and follows it up with a detailed description of what they should contain. The plans are prepared in draft for public comment; finalized after consideration of all objections, suggestions and representations received; and, after final approval by the Central Government, published in the prescribed manner. On such publication, the plan shall come into operation. (Section 10). Once published, the plans can be altered or modified subject to the limitations set out in sub sec. (1) and (2) of Section 11A Section 11A(1)

" THE Authority may make any modifications to the master plan or the zonal development plan as it thinks fit, being modifications which, in its opinion, do not effect important alterations in the character of the plan and which do not relate to the extent of land uses or the standards of population density. (2) The Central Government may make any modifications to the master plan or the zonal development plan whether such modifications are of the nature specified in sub-section (1) or otherwise."

The effect of the plans coming into operation for any area is sort out in Sections

12(4) and 14 : Section 12(4)

" AFTER the coming into operation of any of the plans in any area no development shall be undertaken or carried out in that area unless such development is also in accordance with such plans."

Section 14:

" AFTER the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan: Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force."

(ii) As soon as may be after the commencement of the Act, the Central Government, after consultation with the D.D.A. and M.C.D. may by notification in the official Gazette, declare any area in Delhi to be a development area for the purposes of the Act. The effect of the declaration is set out in sub-section (3) : Section 12(3)

" AFTER the commencement of this Act no development of land shall be undertaken or carried out in any area by any person or body (including a department of Government) unless: (i) where that area is a development area, permission for such development has been obtained in writing from the authority in accordance with the provisions of this Act ; (ii) where that area is an area other than a development area, approval of or sanction for, such development has been obtained in writing from the local authority concerned or any officer or authority thereof empowered or authorised in this behalf, in accordance with the provisions made by or under the law governing such authority or until such provisions have been made in accordance with the provisions of the regulations relating to the grant of permission for development made under the Delhi Control of Building Operations) Act, 1955 and in force immediately before the commencement of this Act : Provided that the local authority concerned may (subject to the provisions of section 53A) amend those regulations in their application to such area."

Another effect is set out in Section 12(2) : Section 12(2)

" SAVE as otherwise provided in this Act, the Authority shall not undertake or carry out any development of land in any area which is not a development area."

but this is subject to the provisions of Section 22A to be referred to later. (iii) Chapter V of the Act contains provisions for the acquisition and disposal of land. We may notice the following sections : Section 15

"(1)If in the opinion of the Central Government any land is required for the purpose of development, or for any other purpose, under this Act, the Central Government may acquire such land under the provisions of the Land Acquisition

Act, 1894. (2) Where any land has been acquired by the Central Government, that Government may, after it has taken, possession of the land, transfer the land to the Authority or any local authority for the purpose for which the land has been acquired on payment by the Authority or the local authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition."

Section 21

"(1) Subject to any directions given by the Central Government under this Act, the Authority or, as the case may be, the local authority concerned may dispose of : (a) any land acquired by the Central Government and transfer to it, without undertaking or carrying out any development thereon; or (b) any such land after undertaking or carrying out such development as it thinks fit, to such persons, in such manner and subject to such terms and conditions as it considers expedient for securing the development of Delhi according to plan,. (2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them : Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose. (3) Nothing in this Act shall be construed as enabling the Authority or the local authority to dispose of land by way of gift, mortgage or charge, but subject as aforesaid reference in, this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise."

(33) The above Act was intended to give concrete shape to the aspirations to avert chaos and bring order in the building up of Delhi so as to enable it to become a magnificent capital for India and take a place of pride in the array of international capital cities all over the world. Stages of the concept of planning in regard to Delhi have been set out in detail in the judgment under appeal of Prithvi Raj J. They have also been discussed in other reported judgments of this Court as well as the Supreme Court. It is, Therefore, not necessary to set out in detail the various stages in the development of this concept and its implementation. It is sufficient to set out at this stage a broad chronological table

which will be helpful in considering the issue in this case in the correct setting :

1947 In the wake of the partition of India and the emergence of Delhi as free India's capital, there is an enormous growth of population in, Delhi resulting in haphazard growth of colonies, scarcity of accommodation, land speculation and creation of slums. This leads the government to think seriously of planning the growth of the city. 1955 Town Planning Organisation (T.P.O.) set up, Delhi (Control of Building Operations) Act, 1955 passed. 1956 The T.P.O. prepares an Interim General Plan (I.G.P.). In pursuance thereof about 3,000 acres of land were notified u/s 4 of the 1894 Act ; on 3-9-57 about 34,000 acres of land were notified on 13-11-59 and about 16,000 acres were notified on 24-1-61. 1957 The Delhi Development Act came into force on 30-12-1957, Constituting the Delhi Development Authority and charging it with the responsibility of preparing a Master Plan for Delhi. 1960 Draft Master Plan prepared by the T.P.O. which had been allowed to continue its survey and planning operations by the D.D.A. The plan is published for public comments on 8-7-1960. 1961 The notification of the land presently in dispute u/s 4 of the 1894 Act. 1962 The Master Plan was finalised and came into force w.e.f. 1-9-62. 1966 Declaration u/s 6 of the 1894 Act in the case of the appellants made on. 7-12-1966. 1969 Declaration u/s 6 of the 1894 Act in the case of the writ petition made on 2-1-1969.

(34) It will be seen that the idea of planning for a better and greater Delhi had germinated as early as 1955 and culminated in the preparation of the Master Plan in September 1962. The 1957 Act also envisaged the preparation of zonal development plans. Unfortunately, however, no zonal plan has been prepared till today. The whole argument of the petitioners/appellants is that neither I.G.P. nor the M.P. have contemplated any planned development of the Cantonment area. In fact, according to them, the T.P.O. which prepared a work study and then the I.G.P. and the M.P. considered the Cantonment area out of bounds for them. In support of this contention the petitioners/ appellants have referred in detail to various pages of these documents containing, according to them, observations supporting the above contention. On the other hand counsel for the respondent contested this argument and relied on other pages of these very documents to support the plea that the Cantonment area has also been taken into account by the planners, It is necessary to refer to them now.

(35) As we have already mentioned, even before the 1957 Act came into force, the T.P.O. was on the job of a civil survey and preparation of the I.G.P. and M.P. This organisation first prepared "Work Studies relating to the preparation of the Master Plan of Delhi" which has been published by the D.D.A. in two volumes. Shri Lekhi referred to the following Sentences occurring at page 97 of Vol. 1 :

" THE Survey included almost the whole of urban Delhi except a few unauthorised colonies on the outskirts of the present urban area and Shadara town since plans were not available for these. Cantonment area has been tabulated as land under defense and no detailed survey has been done though a

large portion of it is in residential use."

He pointed out that Volume 2 contains detailed redevelopment plans for several areas in the city such as Kotla Mubarkpur, Sarai Rohilla, Daryaganj, Ranjit Nagar, Shadipur, Khanpur and South Patel Nagai, Kucha Pati Ram and Sui Walan, Jhandewalan Motia Khan Qadam Sharif, Jama Masjid and Pusa Road but there is no mention of the Cantonment area. On the other hand, Shri Goswami and Shri Lokus referred to a number of other pages of these volumes :

PAGE25 It is pointed out that Delhi's interests and problems extend many miles from the city, all over what has been described as the Central Yamuna Valley Region. 33 "The urban population of Delhi Territory resided in 1951 in ten administratively district cities or townships. These units were.....and the towns of the.....Delhi Cantt....." and Table 3.5 gives the population figures of the Cantt for 1941 51. 34 Table 3.6 gives household size and population figures for the Cantt. 78 The existing urban area of Delhi covers about 42,700 acres. This includes 10,700 acres occupied by the defense department in Delhi Cantt..... It also includes Delhi Cantt. situated in the South West." 79 Delhi Cantonment which form part of the Delhi Urban area is located in, the South West between the Aravallis and the Meterganj Delhi Jaipur Railway line. 88 defense authorities have occupied a large area just north of the University.....These are in addition to the compact 10,700 acres under the Delhi Cantt. Board in the South Western Section, of the city. 94 By applying these criteria, eight Planning Divisions were evolved. Each has its own special characteristics and pattern of development. These eight divisions of the Delhi Corporation, the N.D.M.C. and the Cantt." 95 Division G : West Delhi division..... covers an area of 23,554 acres. It includes a large portion of the Delhi Cantt." 176 Najafgarh Industrial Area :The initial steps in the extension of the development might be most efficient directly south of the existing industrial zone, at the Ring Road and at Station Road opposite the Delhi Cantt. 273 Another point where the rail system conflict with the highways in the level crossings of the broad gauge spur to the cantonment. 278 "Aerodroms : International flights have been transferred to the Palam Aerodrome an I.A.F. installation in the Cantonment area. 292 "Proposed Arterial Road and High-way Development : This requires the early completion of the Ring Road, which is almost completed ...and is well along in the west and northwest with road overpasses over the Rewari, Cantonment ...railway lines." 326 "Augmentation of Trunk Sewerage system : To serve the areas South of Najafgarh Road and the Cantonment area which has no Sewerage system at present, it is proposed to lay a trunk sewer from the Cantonment and above the Cantonment Road as to connect the West Plant after crossing the Najafgarh Road....."

(36) Now we come to the Interim General Plan. Here Sri Vohra and Sri Lekhi refer to the following pages of a cyclostyled version placed before us

"13.Over 60 per cent of the area under the Cantt. Board lies underdeveloped. A major physical feature in Delhi is the ridge, running north-south, which should

not be developed intensively but perhaps maintained as a regional park and space for the use of the entire community." 28 "Ministry of defense controls large areas of land in Delhi State. All land use proposals should be properly co-ordinated between, civil and defense authorities to avoid the development of any conflicting and undesirable uses." 63 ...For the interim plan the following proposals are made : ... 3...It may be desirable to study the possibility of relocating the proposed defense Head Quarters near the Central Secretariat to the South-Western part of the urban area preferably in the Cantt. itself. In fact, for the Cantt. area which is outside our planning jurisdiction, an overall city plan should be prepared as an integral part of the National Capital."

There is a plan attached to the I.G.P. and in this plan, it is pointed out that, while other areas are marked out as residential, commercial, industrial, public and semi-public and recreational, the area of the cantonment is classified as "agricultural". There are three sub-leading under this : (a) Nurseries and Fruit Gardens, (b) Farms and pasture lands and (c) Lands under defense. The lands here in question fall in the last category.

(37) Sri Vohra also referred to the terms of the 1957 Act, itself as reinforcing his submissions. He points out :

(i) that S. 3(3) does not provide for a nominee of the Cantonment Board on the Dda ; (ii) that S. 5(2) similarly does not provide for a nominee of the Cantonment Board on the Advisory Council ; (iii) that S. 12 does not provide for the Cantonment Board being consulted before an area in the Cantt. is declared to be a development area; and argues that such provisions would have been there had it been intended that the Act should apply to the Cantt. area.

(38) Coming to the Master Plan for Delhi, reliance is placed on behalf of the petitioners/appellants on the followings :

Front Page : It is pointed out that the Delhi Development Authority, whose constitution is set out on this page. does not have on it any representative of either the defense Services or the Cantonment Board though the Commissioner of the Mcd and the President of the Ndmcc find place. Page (i) of the Introduction : Shows that no such representative was even co-opted on the ad hoc Board appointed by the Dda to consider the objections and suggestions received. Page (ii) of the Introduction : Though there is a detailed reference to various areas in the city such as Old City, New Delhi, Civil Lines, Connaught Place, Shahdara and so on, there is no reference to the area of the Cantt. anywhere. Pages 1, 2 & 5 : These pertain to Chapter I where Land Use Plan is discussed. There is reference to Faridabad the Ring Towns and the Old City and New Delhi but none to the Cantt. Page 12 : This creates fifteen district centres but none of them cover the Cantt. area. Pages 25-26 : Here Urban Delhi up to its proposed 1981 limits, is being divided into eight Planning Divisions (A to H). Division G is "West Delhi" and a foot-note specifically says that "the figures against " West Delhi do not include the Cantonment area the population of which

by 1981 is estimated to be around one lac. Page-36 : This contains a table of hospitals in the various planning divisions. The number of general hospitals in Division G (West Delhi) is shown as Nil although there are three hospitals in the Cantonment area. Page 56 : This contains a detailed list of built-up residential areas but there is no reference to the Cantt. area. Page 64 : For planning purposes, Delhi is divided into 136 development zones. West Delhi is divided into 17 development zones. No zonal development plan regarding the Cantonment area has been prepared till today. Page 86 : In the summary of recommendations, there is no reference to the Cantonment area though various other areas have been referred to and mentioned specifically.

(39) There are a number of plans which are said to have been prepared simultaneously with the Igp or MP. Some of these have been referred to:

(i) In a plan depicting the existing land use in Urban Delhi, Cantonment Area has just been marked as "Land Under defense". (ii) In another land use plan also annexed to the M.P. which contains a very detailed classification of the entire area of the plan into residential, commercial, industrial, recreational, agricultural, and public and semi-public facilities, the area in question has been shown under the head "Governmental" with a sub-heading "Government Land (use undetermined)". There are also other small packets outside the Cantonment area which carry the same legend. (iii) Another plan marked as No. 5 does not show any major works or even the existing commercial and residential areas. (iv) In another plan, marked as No. 10, which contains the details of community facilities, two hospitals are shown in the Cantonment area but these have been omitted from consideration in the Master Plan.

(40) As against these references made on behalf of the petitioners appellants Shri Goswami and Shri Lokur, appearing on behalf of the Government, also made extensive references to Igp and the Master Plan. It will be useful to refer to the pages relied upon by Sri Lokur and Shri Goswami.

I. G. P. Page (ii) : This states that the ultimate grand objective is a three dimensional plan for a really greater Delhi but the Interim Plan was "not only a physical "hold the line" operation but also in certain significant ways is to lead into the full plan and will make the latter more an expression of the will and well being of the people of Delhi, both present and future." Page (iv) foreword : This shows that the Igp only represented the first phase of the development to cover the next two or three years until the Master Plan was ready. A four fold immediate objective has been set out for the I .G. P. in this paragraph. Page (vi) foreword : This shows that the Interim General Plan cannot be taken as the last word on the subject of planning for the Capital city. Page (viii) (Summary of recommendations) : This states that the recommendations are only intended as a guide before a comprehensive plan is developed. This idea also occurs at p. 62. Page 3 : "The I.G.P. is prepared in a short period of time and without the benefit of extensive research and cannot Therefore be a substance for a comprehensive plan. It is in the nature of a stop-gap operation." Page 11 : There is a reference

to survey of all land within the "incorporated Area" having been made. The expression includes all area within eight Municipal and notified Area Committees and this has been stated to include the notified area under the Cantonment Board. There is also a reference to the table on p. 83 referred to below. Page 13 : There is a passage which refers to more than 60 per cent of the Cantonment Area lying underdeveloped." There is also a reference to the table on p. 84 referred to below. Page 28 : There is a reference to the Cantonment Area and a suggestion that all land use proposals should be properly coordinated between the Civil and defense Authorities. Page 76 : It is suggested here that a Planning Commission should be formed which should include, inter alia, one member for the Delhi Cantonment Board. Page 83 : This contains a table of factual data regarding the land use. Item 7 sets out that Cantonment and other areas under defense are 2830 acres in extent and that this constitutes about 4 per cent of the total incorporated area and 9 per cent of the actually developed area. Page 84 : This contains a table giving details of the developed areas within the total incorporated area. It is stated that of the total area of 10,700 acres falling within the notified area of the Cantonment Board about 4090 acres (or 38.22 per cent) is developed. Pages 90 and 91 : These contain tables showing that there were no Maternity and Child Welfare Centres in the area of the Cantonment. There were no Ayurvedic hospitals hut reference is made to the Delhi Cantonment Board Hospital, and the Military hospital in this area. Pages 93 95 : These contain tables giving the distribution of police stations of post offices and show that the Cantonment Area has been taken into account. M.P. Front Page : The Cantonment Board is not represented on the Dda but a Director, Military Lands & Cantonments, Ministry of defense is on the Advisory Council. Page (i) Introduction : "the I.G.P.....was intended to provided an outline for planned development during a period of two to three years." "the Authority.... after having had such surveys conducted as were necessary draw up a draft Master Plan..... for an estimated population of about 50 lakhs in 1981." Page 1: The Land use plan is for the Delhi Metropolitan area of 800 Sq. miles which.....comprises of the Union Territory of Delhi..... Page 7 : "The ownership of land by Government makes planning and the implementation of plans easier and is imperative if slum clearance re-development and subsidised housing and provision of community facilities according to accepted standard have to be undertaken as, indeed. they must be in Delhi, in a determined way." Page 25 : There are 8 planning divisions of which Division "G" includes Cantonment. The Zonal Map attached to the M.P. shaws 17 Development Zones inside Division G and the Cantonment falls within these zones. Page 32 : Recommendations regarding Airport made. Page 39 : "The process of planning is as continuous as the growth of towns, it is not a "fitful fever". " Page 44 : The discussion here deals with 24 "Use Zones" different from Planning Divisions and Development Zones. These are stated to shown in the Land use plan. Here "G" zone (Item 22) denotes Government & Semi-Govt. offices. Page 53 : Setting out the provisions regarding the several "Use Zones", it is stated in respect of use Zone G : " "Uses permitted : Local State and Central Government offices and use

for defense purposes; research institutions; Social and Central institutions; bus and railway passenger terminals and public utility buildings. Local municipal facilities, uses incidental to government offices and for their use. Parking requirements must be approved. "Use prohibited : All use not specifically permitted herein." Page 86 : This contains the summary of recommendations. This makes it clear that the entire Union Territory of Delhi is under consideration.

(41) In the above background we think that two questions arise for our consideration. The first is whether the development of the Cantonment area also is envisaged by the plans drawn up under the 1957 Act ? If the answer to this question is in the affirmative it will be seen, from the discussion that follows, that even the petitioners/appellants will not be able to deny that the lands are being acquired for a public purpose. But, if the answer to the first question is in the negative, a second question will arise for consideration as to whether the acquisition can nevertheless still be supported as made for a public purpose. But, again before attempting an answer to these two questions. It will be necessary to consider, in the light of the numerous judicial decisions which have dealt with the issue, how far acquisition of lands for purposes of development can be said to be a "public purpose".

(42) We can begin the survey with the decision of the Supreme Court in *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, . In this case, the land of the petitioners was notified u/s 4 of the 1894 Act. The notification stated that the land was likely to be needed "for a public purpose, namely, for development and utilisation of the said lands as an industrial and residential area." The Bombay legislature had amended the definition of "public purpose" in Section 3 of the 1894 Act so as to include, inter alia, "the acquisition of land for purposes of the development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment or sale with the object of securing further development." The validity of the above amendment was called in question by the petitioners. The majority of the Court was of opinion that even without the amendments the notifications issued under Sections 4 and 6 specified a public purpose. Outing the purpose mentioned in the notification the Court observed that it was a public purpose under the Land Acquisition Act as it stood before the amendment made by the Bombay Legislature. In arriving at this conclusion the Court referred to a series of earlier decisions in *State of Bombay v. Bhanji Munji* Air 1955 S.C. 51, *Babu Barkya Thakur Vs. The State of Bombay and Others*, , *Pandit Jhandu Lal and Others Vs. The State of Punjab and Others*, and *Smt. Somavanti and Others Vs. The State of Punjab and Others*, . The minority judgment, which held that the amendment by the Bombay legislature was vitiated by the vice of excessive delegation, also agreed that the concept of "public" purpose as used in the Constitution also covered the purposes set out by the amended definition of the expression by the Bombay Act. After pointing out that no hard and fast definition of the expression "public purpose" could be laid down and that it was rapidly changing concept which had to be construed

according to the spirit of the times and that whatever will further the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose. Their Lordships observed :

"WE have already set out the addition. It is in two parts. The first part provides for acquisition of land for purposes of the development of areas from public revenues or some fund controlled for managed by a local authority. So far as this part is concerned, it is conceded by learned counsel for the petitioners that development of areas with fund controlled or managed by a local authority would be a public purpose. Under this part the land would be acquired by the State or by a local authority for the purposes of development and this development will consist generally speaking, of levelling land, providing roads thereon providing drainage and electric lines and such other amenities as should be made available at the time when the acquisition is made and the land is developed. Such development generally speaking is not possible through private agencies. As we have said already, it is not disputed on behalf of the petitioners that such development would be a public purpose within the concept of the phrase in Art. 31(2) of the Constitution. (33) The attack of the petitioners is on the second part of the addition in 1953 which provides for "subsequent disposal thereof in whole or in part by lease assignment, or sale with the object of securing further development." It is urged that all these words means is that after the development envisaged in the first part of the addition the State or the local authority would be free to dispose of the land acquired in whole or in part by lease, assignment or sale, apparently to private persons. This, it is said, means that the State or the Local authority would acquire land in the first instance and develop it in the manner already indicated and thereafter make profit by leasing, assigning or selling it to private individuals, or bodies. It is also said that the object of securing further development which is the reason for sale or lease etc. is a very vague expression and there is nothing to show what this further development comprises of. (34) It is true that when this part speaks of "subsequent" disposal thereof in the whole or in part by lease, assignment or sale it is not unlikely that this disposal will take place to private persons and thus in an indirect way the State would be acquiring the land from the set of individuals and disposing it of to another set of individuals after some development. If this were all, there may be some force in the argument that such acquisition is not within the concept of "public purpose" as used in Art. 31(2). But this in our opinion is not all. We cannot ignore the words "with the object of securing further development", which appear in this provision. It would have been a different matter if the provision had stopped at the words "lease, assignment or sale"; but the provision does not stop there. It says that such lease, assignment or sale must be with the object of securing further development, and these words must be given some meaning. It is true that the words "further development" have not been defined, but that was bound to be so, for further development would depend upon the nature of the purpose for which the land is acquired. Of course, it is possible that further development can

be made by the State itself or by the local authority which acquires the land; but we see no reason why the State or the local authority should not have the power to see that further development takes place even through private agencies by lease, assignment or sale of such land. So long as the object is development and the land is made fit for the purpose for which it is acquired there is no reason why the State should not be permitted to see that further development of the land takes place in the direction for which the land is acquired, even though that may be through private agencies. We have no doubt where the State or the local authority decides that further development should take place through private agencies by disposal of the land so acquired by way of lease, assignment or sale it will see that further development which it has in mind does take place. We can see no reason why if the land so acquired is leased, assigned or sold, the State or the local authority should not be able to impose terms on such lessees, assignees or vendees that will enable further development on the lines desired to take place. We also see no reason why when imposing terms, the State or the local authority may not provide that if the further development it desires the lessee, assignee or vendee to make is not made within such reasonable time as the State or the local authority may fix, the land will revert to the State or the local authority so that it may again be used for the purpose of further development which was the reason for the acquisition of the land. (35) Take the case where land is acquired for the purpose of development of certain areas for residential purposes. The State or the local authority levels the land where necessary, make a lay out, provides roads, drainage, electric lines and such other amenities as may be available where after houses have to be built. The State or the local authority may build these houses itself, but there is no reason why if the purpose is development of certain land as a residential area, the State or the local authority may not lease, assign or even sell the lands laid out and already developed in order that further development of building houses may be achieved. In such a case it will always be open to the State Government or the local authority to provide, and we have no doubt that it will always so provide, that the persons to whom the land is leased, assigned or sold carry out the further object of building houses. There is also no reason why the State or the local authority should not provide for the terms on which residential buildings would be made. The specifications of such buildings, and the time within which they should be made. There is also no reason why the terms should not provide that if the further object of development is not carried out within a reasonable time, the land would revert to the State or the local authority to be used for the purpose for which it was acquired. We have no doubt that the State or the local authority would see that such terms are imposed on those to whom lands are lessed, assigned or sold with the object of further development by constructing houses where the scheme is for residential purposes. We have also no doubt that in imposing terms, the State or the local authority will see that the purpose for which the lease, assignment or sale is made is carried out within a reasonable time, failing which the land will revert to the State or the local authority. These matters are in our opinion implicit in the words "with the object of securing

further development", and we have no reason to think that the State or the local authority would just dispose of the land so acquired by lease or assignment or sale without caring to see that further development which was the basis of acquisition takes place. (36) We may refer in this connection to a similar provision in S. 41 of the Act, which provides for an agreement between the private company for which the land is acquired and the State and which lays down that the agreement shall provide the terms on which the land shall be held by the company. There is in our opinion no doubt that when this provision speaks of "with the object of securing further development" it implicitly requires that before the land so acquired is leased, assigned or sold, the State or the local authority shall see that the purpose for which the acquisition is made is carried out by persons to whom the land is leased assigned or sold. There is also in our opinion implicit in this provision that the State or the local authority would impose terms on the persons to whom the land is leased assigned or sold and the terms should be such as to ensure that the object of further development takes place within a reasonable time and if the persons to whom the land is leased or assigned or sold do not carry out that object within a reasonable time, the land would revert to the State or the local authority so that it may again be used for the purpose for which the acquisition was made. If this is the true import of the words "with the object of securing further development" in this provision and we have no doubt that it is so we fail to see how the provision made by the 1953 Act providing for development in two stages, first by the State or the local authority itself by making the land fit for the purpose for which acquisition is made, and then by private persons also after the land is developed by the State or the local authority, is not for a public purpose within the meaning of that phrase in Art. 31(2) of the Constitution. Population in India is rising and more or (and ?) more industries are coming into being. Therefore where the acquisition is with the object of providing for residential and industrial development, we see no reason why such provision would not be included in the concept of public purpose in the present context. We are Therefore of opinion that the words "with the object of securing further development" have a meaning and if that meaning is what we have stated above (as to which we have no doubt) it cannot be said that this provision made by the 1953-Act is not within the concept of Art. 31(2) of the Constitution. We Therefore hold that the amendment by the 1953-Act already set out above is within the concept of public purpose in Art. 31(2) of the Constitution and cannot be struck down as ultra vires."

We may also refer to another contention which was noticed and rejected in this case which is discussed in paragraph 23 of the majority judgment:

"(23)Lastly, he contended that the Government had not before issuing the notifications prepared any scheme. This is true that the Government has not up-till now prepared any scheme for the utilisation of the developed sites. But the notification itself shows that the sites would be used as residential and industrial sites. There is no law that requires a scheme to be prepared before issuing a

notification under S. 4 or S. 6 of the Act. We have, however, no doubt that the Government will, before disposing of the sites, have a scheme for their disposal."

(43) We shall next refer to *Munshi Singh and Others Vs. Union of India (UOI)*, . This case has been strongly relied on by Shri D. R. Dhamija. It is necessary to note its facts carefully. In this case an extent of 34,000 acres in 50 villages of Ghaziabad was notified u/s 4 of the 1894 Act for "planned development of the area". This was followed by piecemeal notifications under Sections 6 and 17 in 1961, 1962 and 1963. On February 9, 1962, a notification was published modifying the earlier notification of 1960 and reducing the area of acquisition from 34,000 acres to 6,401 acres. The notification specifically mentioned that a plan of the land could be inspected in the office of the Collector Meerut. In order to enable it to file objections, the appellants made an application to the Special Land Acquisition Officer for supplying or copy of the scheme of planned development for which the notification u/s 4 had been issued. It was pointed out that the Government had not published this scheme and without a copy of the scheme no forceful arguments could be submitted. On this application the Special Land Acquisition Officer made an order to the effect that the "the Scheme of the planned development is not necessary for a notification u/s 4 of the Act, as such, no such scheme of the planned development is available in this office." It was in these circumstances that the notification were challenged. The argument on behalf of the appellants is set out in paragraph 4 of the judgment.

"DR. Singhvi has based his argument on the above significant facts. According to him the words in the notification, namely, "for planned development of the area" gave no indication whatsoever as to the precise purpose for which the land was required. Planned development could be of various kinds. It could be for residential, industrial or some similar purpose. Moreover for development of a particular area the Government may acquire the land itself and develop it or it may control the development of that area by making a scheme or a Master Plan. It is urged that the scheme of the Acquisition Act, shows that public purpose for which the land is needed or is likely to be needed should be stated with sufficient particularity and in such a manner that a land owner should be able to file an objection under S. 5A. The whole objection of S. 5A would be defeated if the public purpose is stated vaguely and without any indication of the nature of the purpose for which the land is being or is intended to be acquired."

This contention was accepted after examining the scheme of the 1894 Act. In regard to Section 4(2) of the said Act the Court observed :

"IT is apparent from sub-section (2) that the public purpose which has to be stated in sub-sec. (1) of Section 4 has to be particularised because unless that is done the various matters which are mentioned in sub-section (2) cannot be carried out; for instance, the Officer concerned or his servants and workmen cannot do any act necessary to ascertain whether it is suitable for the purpose for which it is being acquired. If the public purpose stated in S. 4(1) is planned development of the area without anything more it is extremely difficult to

comprehend how all the matters set out in sub-sec. (2) can be carried out by the Officer specially authorised in this behalf and by his servants and workmen."

The Court then proceeded to consider Sec. 5A which embodies the wholesome principle that a person whose property is intended to be acquired should have a proper opportunity of persuading the authorities that the acquisition should not be made. This requirement, it was held, was not fulfilled in the case under consideration. Their Lordships observed:

" AS already noticed in the notification u/s 4 all that was stated was that land was required for "planned development of the area". There was no indication whatsoever whether the development was to be of residential and buildings sites or of commercial and industrial plots. Nor was it possible for an one interested in the land sought to be acquired to find out what kind of planned development was under contemplation. That is whether the land would be acquired and the development made by the Government or whether the owners of properties would be required to develop a particular area in a specified way. If the Master Plan which came to be sanctioned on 4th September 1962 had been available for inspection by the persons interested in filing objections or even if the knowledge of its existence on the part of the appellants had been satisfactorily proved the position may have been different. In that situation the appellants could not claim that they were unable to file objections owing to the lack indication in the notification u/s 4 of the nature of development for which the area was being requisitioned.

Referring to the decision in *Arnold Bodricks*" case Air 1966 S.C. 1978, the Court observed :

" THE points which arose for determination in that case were entirely different. At any rate the public purpose was stated with sufficient particularity, namely, for development and utilisation of the land as an industrial and residential area. Once it was stated that land will be utilised for the aforesaid purpose the persons interested could certainly object effectively. But the mere words are to be found in the notifications here "planned development of the area" were wholly insufficient and conveyed no idea as to the specific purpose for which the lands were to be utilised."

Again, referring to Section 5A the Court observed :

" IF it has any purpose and if it has to be given its full effect the person interested in the land proposed to be acquired must have an opportunity to submit his objections and that he can only if the notification under S. 4(1) while mentioning the public purpose gives some definite indication or particulars of the said purpose which would enable the persons concerned to object effectively if so desired. In the absence of such specific or particular purpose being stated the objector cannot file any proper or cogent objections under S. 5 which he has a right to do under that provision."

The notifications were, Therefore, quashed.

(44) *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, which can be briefly referred to as the "Aflatoon case" has been very strongly relied upon for the respondents. In that case, the notification that was challenged before the Supreme Court was a notification under Sec. 4 of 1894 Act dated November 13, 1959 to the effect that an area of 34070 acres of land was needed for a public purpose "namely, the planned development of Delhi". Earlier the validity of this notification had been attacked on various constitutional grounds in *Udai Ram v. Union of India*. AIR 1968 S.C. 1138. The objection had been rejected and the validity of the notification had been upheld. In the *Aflatoon* case, the notification u/s 4, followed by declaration under Sec. 6 were attacked, inter alia, on the ground "that the public purpose specified in the notification issued under Sec. 4, namely, the "planned development of Delhi" was vague as neither a Master Plan nor a Zonal Plan was in existence on the date of the notification and as the purpose specified in the notification was vague, the appellants were unable to exercise effectively their right under Sec. 5A of the notification. In paragraph 4 of the judgment there is a reference by the Court to the imperative necessity to check the haphazard growth of houses and to implement the scheme of planned development of Delhi. Referring to the rule laid-down in the *Munshi Singh and Others Vs. Union of India (UOI)*, that the particular purpose should be specified in the notification the Court observed :

" THE question whether the purpose specified in a notification under S. 4 is sufficient to enable an objection be filed under S. 5A would depend upon the facts and circumstances of each case."

Then a reference to the *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, was made and then the Court observed :

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

Again, repelling the contention that, on the date when the notification under S. 4 was published, the Government had not declared any area in Delhi as a development area under the 1957 Act, nor was there a Master Plan drawn up before in accordance with the Act and so the acquisition of the property for planned development of Delhi was illegal, the Court observed :

" THE planned development of Delhi had been decided upon by the Government before 1959 namely, even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after that Act came into force, but there was no inhibition in acquiring land for planned development of Delhi under the Act before the Master Plan was ready. (See the decision in *Patna*

Improvement Trust Vs. Smt. Lakshmi Devi and Others, . In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes development. For planned development in an area other than a development area; it is only necessary to obtain the sanction or approval of the local authority as provided in S. 12(3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority."

(45) *Raj Kumar and Another Vs. The Union of India and Others*, , was the decision of a Division Bench of this Court regarding the notification u/s 4 of the 1894 Act dated November 13, 1959. This case was decided after *Munshi Singh and Others Vs. Union of India (UOI)*, but before *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, . In this case the relevant notifications were challenged on various grounds and it is sufficient to refer to the discussions regarding the arguments which are relevant for the purposes of this case : (a) It was argued that the purpose of "planned development of Delhi" was not in the nature of public purpose at all within the meaning of the section. This argument was repelled by referring to the terms of counter affidavit explaining the problems brought in by the tremendous increase in the population of Delhi and the need to check haphazard growth and to ensure the orderly and planned development of the city and it was observed that the purpose specified was one in which the general interest of the community and not the particular interest of the individual was directly and vitally concerned and that it was clearly a public purpose, not a private or individual purpose. (b) The second contention was that, even if it is said to be a public purpose as distinguished from a private purpose, it could not be said to be a public purpose in the eye of law as it is vague, indefinite and uncertain and not sufficient to enable objections to be put forward u/s 5A of the Act. Reliance in support of this contention was placed on the decision in the *Munshi Singh and Others Vs. Union of India (UOI)*, . On the other hand, on behalf of the respondents reliance was placed on the case of *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, . In repelling this argument the Court referred to the detailed facts set out in the counter affidavit filed on behalf of the respondents. It may be mentioned here that even in C.W. 1511/74 and the other writ petitions which have given rise to the Letters Patent Appeals, it is practically the same counter-affidavit that has been filed in regard to the common grounds; only a few paras have been added to bring out special facts of each case. It is unnecessary to repeat these averments which are set out at pages 100-102 of the above judgment. On the strength of these facts, the Court distinguished the decision in the *Munshi Singh* case and held that there was a definite scheme for development which had been sufficiently enunciated in the interim general plan and the Master Plan, and that, Therefore, the purpose had been set out with sufficient particularity. (c) It was then contended that the

Master Plan was not in existence on the date of the notification u/s 4 and so could not be looked into. This argument was rejected. It was observed that the Master Plan was available for inspection and that as pointed out by the Supreme Court in the Munshi Singh case, once the Master Plan is available for inspection by person's interested in filing objections then it is not possible for them to complain of lack of indication in the notification of the nature of the development for which the area was being acquired. (d) It was next contended that even if the Master Plan could be taken into consideration, it only contained a broad pattern of the land use and that unless the specific purpose for which the land of the petitioners would be utilised was known it could not be said that it was possible for them to put forward effective objections u/s 5A. This argument was rejected. It was held that the public purpose has to be stated with reference to the entire land sought to be acquired and not with reference to each part of the land in which each individual might be interested. The specific land use will be available only after the zonal development plans are prepared and published. But the Master Plan and the land use plan gave sufficient particulars of the public purpose of the planned development to enable the persons interested to make effective objections. (e) So far as the interim general plan was concerned it was contended that the information contained in them was of an interim nature, not sufficient for making effective objections u/s 5A. The Court pointed out that the Interim General Plan contained various proposals and recommendations as a guide for development in the immediate future to the extent possible until a more thoroughly studied general or comprehensive plan was prepared. No doubt it was of an interim nature but it had all the characteristics of a comprehensive and Master Plan except that whereas a comprehensive plan was of a long range the Interim General Plan was of a short range. This plan divided and demarcated the entire region of Delhi and indicated the various uses to which the divisions were proposed to be put. It contained sufficient information and particulars of the nature of the development proposed and recommended to enable persons interested to file objections u/s 5A. For the foregoing reasons the Court held that the contention of the petitioners that the purpose in the notification was vague, indefinite and uncertain could not be accepted. The other discussion in the judgment is not relevant for our present purpose.

(46) The next decision to consider is Smt. Ratni Devi and Another Vs. Chief Commissioner, Delhi and Others, . In this case the notification challenged was that of November 13, 1959. The Court dismissed the writ petition following the decision in the Aflatoon and Others Vs. Lt. Governor of Delhi and Others, . It is sufficient hereto to refer to paragraph 11 of the judgment : "Declaration under Sec. 6 of the Act pursuant to the notification u/s 4 of the Act have been held by this Court to be valid for acquiring the notified land for the planned development of Delhi. In Aflatoon and Others Vs. Lt. Governor of Delhi and Others, , this Court held that the planned development of Delhi is a public purpose. In Aflatoon's case (supra) it was held that in the case of an acquisition of a large area of land comprising several plots belonging to different persons, the specification of the

purpose can only be with reference to the acquisition of the whole area. The notification which was for the acquisition of over 30,000 acres of land in the very nature of things could not specify each particular purpose, and, Therefore the planned development of Delhi was of sufficient particularity."

(47) In Pt. Lila Ram Vs. The Union of India and Others, the acquisition of 3000 acres of land by a notification u/s 4 dated September 3, 1957 was challenged. The purpose of the notification was stated to be "Execution of the Interim General Plan for the greater Delhi". This, it was argued, was very vague. Though the Court was of opinion that the appellant should not be allowed to agitate this question which was being raised before the Supreme Court for the first time, it also observed : "We are of the view that the public purpose mentioned in the notification, namely, for the execution of the Interim General Plan for the greater Delhi is specific and does not suffer from any vagueness. It is significant that the land covered by the notification is not a small plot but a huge area covering thousands of acres. In such cases it is difficult to insist upon greater precision for specifying public purpose because it is quite possible that various plots covered by the notification may have to be utilised for different purposes set out in the Interim General Plan." The Court also rejected the argument that the execution of the Interim General Plan was not a public purpose.

(48) It is in the context of the above judicial decisions read with the 1957 Act and the two plans that the two questions earlier posed by us in para 41 have to be considered. We shall first take up the question whether the I.G.P. and M.P. have also got a programme of development for the Cantonment Area or not. Prithvi Raj J. has answered this question in the affirmative. He has discussed the position regarding the I.G.P. in paras 36 and 37 (pages 390-92) and the arguments based on the M.P. were considered by him in paras 76 to 86 (pages 405 to 409) of *Tribhuvan Nath Bhargava Vs. Union of India and Others*, . On the other hand, the contention of the petitioners/appellants in this regard derives considerable strength and support from the order of Avadh Behari J. The learned Judge, if we may say so with respect, has, in picturesque and forceful language, arrived at the conclusion that the plans did not extend to the Cantonment. Broadly speaking, the reasoning of the learned Judge is as follows: He has interpreted the word "planned development" as a concept adumbrated in the Act and executed in the plan to which the Cantonment is not subject. According to him, the plan is intended for the city and not for the cantonment which is "in a class apart", cantonment being a military" settlement while the plan is a "social development" framed "in the setting of piping times of peace". If the plan confines itself to the city of Delhi and excludes the cantonment area from its scope, the learned Judge says, the Central Government has no power or authority to acquire the petitioners' lands for the above public purpose of the planned development of Delhi. He has argued that if there is no plan for the cantonment there cannot be planned development in that area. "Supposed the Government acquires the petitioners' land, what will it do with it ? All that it can do with it is to develop it according to the plan. But the plan has no programme

for its development. It has not decided anything about the future programme for this land. It has left the use undetermined and when the use is left undetermined; "there is no appointed destination" and no zonal plan can be prepared. The plan does not even mark it out as a military zone. We have in the Plan an industrial complex, the housing complex, the sports complex, so on and so forth. But where is the military complex ? The plea that the plan as drawn up can be modified is no real answer because the power to modify is a limited power restricted to alteration in nonessential particulars and subject to the basic pattern of the plan already developed. The Central Government also cannot alter the plan so as to extend it to the cantonment, the reason being that the Act does not contemplate any programme of development for the cantonment area. The cantonment area has not even been declared as a development area. The Central Government cannot also ignore the provisions of the Cantonments Act and acquire land under the 1894 Act. A general Act must yield to the Special Act In these circumstances, to uphold the acquisition would mean the freezing of the land acquired for an indefinite period of time to await a plan that may or may not be drawn up Therefore in future.

(49) We have given the matter deep thought and we are of opinion that it would not be correct to treat the Cantonment as being out of the pale of the plans for development that have been drawn up. The fact that the Cantonment is not a "civil" area and that it has special rules of local administration appear to us to have no bearing on the issue under consideration. We have also held that the 1924 Act does not preclude invocation of the 1894 Act for purposes of development. The I.G.P. makes it clear that the "total incorporated area" includes the Cantonment; takes into account statistics relating to the area though a detailed survey does not appear to have been undertaken; and suggest that development in this area should be co-ordinated between the civil and defense authorities. The observation on p. 63 that the Cantt. area is "outside and planning jurisdiction" in the above context only means that detailed plans were not worked out at that stage as that needed consultation with the defense authorities. But the area has been marked as "land under defense". Then comes the 1957 Act. It applies to the whole Union Territory. It has on its Advisory Council a member of the defense Department. It has representatives of the Metropolitan Council who represents the whole territory. The references to "local authority" in the Act are comprehensive enough to include the Cantonment Board. The Master Plan is also fully comprehensive. The Cantt. area is included in the Planning Division, as well as the Use Zones. It also specifies with sufficient particularity the types of uses of land permitted and prohibited in Use Zone G. The use is to be for Government offices, broadly speaking, just as other use Zones are classified as residential, commercial etc. If the Cantt. area is not included in the Plan, why should it find a place in the land use plan at all. The land use plan also refers to use as Government land and the words "use undetermined" only mean that the Plan does not decide exactly which of the several categories of buildings referred to among the permitted uses are to be

put up on these lands. The further details are, yet to be worked out in the zonal development plans. If no zonal development plan has been worked out for the Cantt., they have also not been drawn up for any other zones [vide Municipal Corporation of Delhi Vs. Kishan Das and Another, : Faqir Chand Vs. Shri Ram Rattan Bhanot,]. We are, Therefore, of opinion that it would not be correct to say that the I.G.P. and the M.P. have no plan at all for the Cantonment area.

(50) In view of our above conclusion, we think that the lands were properly notified for the planned development of Delhi which is clearly a public purpose in the light of the decisions referred to earlier. But we think that the purpose of acquisition would be a public purpose, even if we assume that the plans did not actually cover the Cantt. area but left plans for the development of this area to be drawn up in future. In considering this aspect, the crucial point for determination is the meaning that should be assigned to the words "planned development of Delhi" used in the notifications. This expression ordinarily connotes the development of Delhi according to plan. It does not necessarily mean development in accordance with a plan already in existence but also takes in development in accordance with a plan that may be drawn up. It is a very wide expression. The public purpose to be achieved is that certain areas in Delhi are likely to grow rapidly in an unsystematic manner resulting in several problems and that this can be prevented only by the Government acquiring those lands developing them, or getting them developed and then reorganizing and redistributing them in a systematic and organized manner. There is no justification to restrict this comprehensive purpose by confining it to the four corners of the plans actually drawn up. It only requires that the proposed development should not be haphazard or unsystematic but should be according to plan. It seems to us that the attempt to restrict the content of the wide concept of "planned development" merely because actual blue prints of the T.G.P. and M.P. are available and to construe the words "planned development of Delhi" as referable to development within the four corners of these plans would not be correct. We do not think that the concept of "public purpose" requires that, even at the stage when the lands are proposed to be acquired, there should be ready a. complete comprehensive or detailed scheme or plan as to the manner in which they are to be developed and the actual use to which they are proposed to be put. In *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, it was held that the existence of a scheme or plan at the stage of proposed acquisition is not necessary. At the same time, it should not be entirely something in the air, riot even conceived of in the mind of the Government. What is necessary is that there should be an indication of the broad lines of development for which it will be acquired and that is there in this case.

(51) We can consider the question from another angle also. It is true that, after the 1957 Act, development in Delhi can be only in accordance with the said Act. It is also true that the Act contemplates a Master Plan and Zonal Plans to be drawn up. But does this mean that if, for some reason, the plans leave out of consideration a particular area, there can be no planned development in regard

to that area ? We think not. The Act does not in our opinion, confine development in the Union Territory to the area covered by the M.P. and the Zonal development plans only. In our analysis the Act envisages a three pronged derive for development. The first and most important procedure for development under the Act is set out in Chapter Iii and IIIA. The D.D.A is forthwith entrusted with the task of carrying out a civic survey of Delhi and preparing a Master Plan therefore. Zonal development plans are also envisaged. Once the Master Plan and zonal development plans are prepared, the Authority has a limited power of modifying them while the Central Government has wide powers in regard thereto. But we do not think it can be seriously suggested that once a Master Plan is prepared that sets the seal on the extent of territorial development in Delhi. Section 7 of the Act contemplates the preparation of a Master Plan for Delhi and a single plea seems to be envisaged for the whole of the Union Territory as soon as may be after the commencement of this Act. But suppose the Master Plan prepared leaves out the area of the Cantonment, will that be an end of all planning for the Cantt. ? Will it completely preclude the Authority from preparing a supplemental Master Plan intended for the Cantonment Area ? We think not for instance, the Act also contemplates the preparation of zonal development plans at a very early date but it is common ground that, though more than 20 years have passed, no zonal development plan has been prepared so far. This shows that detailed planning is a prolonged process. If the authorities are told that their planning does not extend to the Cantonment or certain other areas they may yet draw up a Master Plan (supplements) to the uncovered Area. In other words, a detailed plan can be drawn up for the Cantt. area also at any time before the disposal of the lands acquired as pointed out in the Arnold Rodricks and Another Vs. State of Maharashtra and Others, and so the mere fact that the Master Plan, such as it is, can be construed as not extending to the Cantonment area does not mean that the Cantonment area is outside the pale of all development under the Delhi Development Act. The only effect of the preparation of the plans is that. after the coming into operation of any of the plans in any area, no development can be undertaken in that area except in accordance with the plan and no use can be made on any land or plot in any zone otherwise than in conformity with such plans. Where a plan is prepared in respect of an area it no doubt defines and limits the manner of development of that area. But from the fact that no plan is prepared for an area it cannot be inferred that the area in question is a non-developable area. An additional plan for such area can be prepared at any time or the plan already prepared got modified u/s 11A.

(52) The second trigger for developmental action is set out in Chapter Iv of the Act. Soon after the commencement of the Act i.e. simultaneously with the steps for the preparation of the Master Plan and the Zonal Development Plans or even earlier and independently thereof the Central Government may by notification declare any area in Delhi to be a "development area" for the purposes of the Act. Once an area is declared as development area then no development is possible in

that area without the permission of the D.D.A. There is nothing in the statute to correlate this development area with the area for which a master plan is or has been prepared. Even if no Master Plan at all is prepared or even if, as is contended a plan is prepared but some area of the Union Territory of Delhi have been left out of the plan, there is nothing to preclude the Government from declaring such area to be a development area and thus enabling the D. D. A. carry out the process of development contemplated under the Act through the instrumentality of the D.D.A. In other words, planned development is possible by the D.D.A. in areas for which there is no plan at all.

(53) In addition to the above two procedures outlined in paras 51 and 52, there is still a third possibility of development under the Act in areas not covered by the plan and not declared development areas. Section 12(3) lays down that after the commencement of this Act, no development can take place in any such area in Union Territory, except with the consent of the local authority concerned which will act in accordance with the provisions of the regulations applicable in this behalf. That apart, section 22A declares that it will be open to the Authority, if it is of opinion that it is expedient to do so. to undertake or to carry out any development of any land which has been transferred to it or placed at its disposal u/s 15 or Section 22 even if such land is situated in any area which is not a development area.

(54) The provisions of section 15 of the 1957 Act have to be read and understood in the light of all the above provisions. That Section enables the Government, when it is of opinion that any land is required for the purpose of development or for any other purpose under the Act, to acquire the land under the provisions of the 1894 Act. Such acquisition can certainly be made to enable the D.D.A. not only to develop lands in an area covered by the M.P. in accordance with it but also to develop the lands in a development area not covered by the plan. If this be so, it would be in our opinion incorrect to restrict the purpose of the acquisition of lands by the Central Government in Section 15 to a mere implementation of a master plan that may have been drawn up. In our opinion, the validity of the acquisition does not depend upon the situs of the land wherever the land may be, what the Act enables the Central Government to do is to take into account the real potentialities and necessities of planned development. If the exigencies of the situation require that to prevent unsystematic and irregular expansion in certain areas, it is necessary to acquire lands for the purpose of development the Central Government may do so. Having done so the Government will proceed to act u/s 15(2). The lands may be handed over to the Delhi Development Authority and the Delhi Development Authority may act as contemplated in Section 21 read with Section 22A or in the alternative, the Central Government may hand over the lands to local authority and the development will thereafter be subject to the directions of the Central Government u/s 21 of the Act. Section 21 also lays down that the steps taken by the D.D.A. or local authority in this direction should be such as to secure "the development of Delhi according to plan" and it is perhaps of some significance

that the word "plan" in this section does not have the meaning assigned to it in Section 9.

(55) The above analysis of the 1957 Act shows that there is no reason to limit concept of "planned development" to the development as envisaged in the Master Plan that was drawn up in 1962. It is no doubt true that when it was prepared in 1962 the master plan was expected to meet the situation of population and colony explosions till 1981 but the rate of growth of the metropolitan area of Delhi has been rapid beyond imagination. From the note put up to L.G. in the proceedings for issue of a declaration u/s 6 of the 1894 Act, it is seen that in the area presently under consideration there was a rapid mushroom growth of colonies which had to be controlled and restricted. It was, Therefore, necessary that this area should be developed on a planned basis and that the haphazard growth should not be allowed to continue. The lands were, Therefore, taken over and this appears to clearly fall with the concept of planned development. It has been pointed out by the Supreme Court in *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, that it is not necessary that "planned development" can be conceived of only in the context of a scheme already prepared and ready at the stage of acquisition. In the *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, , the purpose was considered to be sufficiently specific and particular in view of the fact that the master plan had not by that time been drawn up. *Munshi Singh AIR 1973 S.C.* was decided on facts which showed no conception at all of planned development even the areas proposed to be acquired varied vastly in the two Notifications issued. Here the acquisition is in context of a concept adumbrated in the Act, sufficiently outlined in the Act and found necessary to be invoked in view of the actual situation prevailing in the area. The decision shows that what is necessary is not that there should be a specific and detailed plan in accordance with which a particular use of the land can be predicated at the time of acquisition; all that should be made out is that there is a necessity for the Government to take over the lands to ensure systematic and regular development on lines broadly indicated and widely known. The public purpose is that the lands in a particular area should be brought under control because if left without control there is a likelihood of unscrupulous persons proceeding to exploit the situation and creating serious problems for the community. In matters of planning acquisition cannot wait until a regular blue print is ready. The process of actual planning is long drawn out and necessarily involves delay on no mean scale. The practicalities of the situation over reach the policies in this regard very much before expectation. Actual planning will always be quite far behind the necessities of the situation. To restrict the scope of acquisition to the outlines of a plan actually drawn up would be practically to put a stop to effective efforts at planned development. We have Therefore come to the conclusion that the acquisition for planned development of the Cantonment area is in order even on the assumption that the M.P. only incidentally touched upon, but did not actually plan for, the development of these areas.

(56) We shall now briefly deal with certain minor points raised within the framework of the principal contention that no public purpose has been made out in this case which has been dealt with at length above. It was argued that the M.P. refers to the land use as undetermined and that as, in the context of planning, purpose and "use" are interchangeable the purpose of acquisition is non-existent. Stroud (1974 Edn.) P. 2214 defining "purpose" was referred to. We are unable to accept this argument. The "purpose" of acquisition of a land may be for a hospital but its "use" may be as residential quarters for the staff or a canteen for the staff. In the present case, the actual land use is not known; but the purpose of the acquisition is quite clear as discussed already. Even in an area covered by the M.P. and the land use can be said to be determined only when the zonal plans are prepared See Faqir Chand Vs. Shri Ram Rattan Bhanot, and Municipal Corporation of Delhi Vs. Kishan Das and Another, . It was then argued that the land was being acquired to put up a residential colony, that an earlier request by certain colonisers to put up a housing colony had been rejected by the Cantonment Board and that the proposal also conflicts with the M.P. and overlooks that the area is situated in a Cantonment. We have pointed out earlier that the situation of the land in the Cantonment does not preclude development, that putting up a residential colony can be done consistently with the provisions of the Cantonment Act, that the basic reason for acquisition in cases like this is to prevent private colonies from developing and to regulate the development of new colonies residential or otherwise through a statutory organization. These objections are, Therefore, without force. It was also argued, relying on the Munshi Singh and Others Vs. Union of India (UOI), , that the purpose had not been "sufficiently particularised". As Aflatoon Aflatoon and Others Vs. Lt. Governor of Delhi and Others, and subsequent decisions of the Supreme Court referred to earlier show no more detailed or specific particularisation can be given in a notification by which such a vast extent of land is acquired. This objection cannot, Therefore, be upheld. It was then contended that the objections u/s 5A had been disposed of laconically Sri Lokur pointed out that some of the appellants (LPA 114 & 115) were not the owners of the land at all at the time of the notifications while the other appellants had filed no objections at all. But, that apart, all the objections were considered and a report thereon made by the land Acquisition Collector as pointed out by Prithvi Raj J. (Para 88 and 89). All the matters were before L.G. who decided that the objections be rejected. A speaking order is not necessary in recording satisfaction u/s 6. It was also argued that the satisfaction of the L.G. was recorded on the reasons recorded in the office note, that the lands were acquired for a residential colony and the L.G. did not apply his mind as to whether the lands were needed for defense purpose as envisaged in the I.G.P. & M.P. This objection is not tenable. According to M.P., the exact use of the land had been left undetermined. Moreover at that stage, the use to which the lands were to be put was not relevant. The public purpose was to acquire the area so as to put a stop to undesirable colonising operations and to enable proper planned development.

Publication Of Section 4 Notice

(57) Sri Dhamija raised a contention that the mandatory requirements of Section 4(1) of the 18 Act in regard to the publication of the substance of the notification at convenient places in the locality has not been complied with. He urged relying on the decisions of the Supreme Court in Khub Chand and Others Vs. State of Rajasthan and Others, and Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, , that this requirement is mandatory and that a failure to comply with it would vitiate the acquisition. Prithvi Raj J. had rejected this contention (see para 67 of the judgment) by stating that the Administration in their counter-affidavit had controverted this averment and further that the filing of objections by various persons itself showed that the notification u/s 4 had been published in the locality. Sri Dhamija submits that this was not correct and that the factum of publication should have been got verified from the records. He pointed out that objections might have been put forward because of the publication of the notification in the official gazette and that merely from the fact that a number of persons had filed their objections, it could not be presumed that publication as set out in Section 4 had been effected.

(58) Counsel for the respondents produced the file relating to the acquisition of the lands in question. This contained a copy of the notice u/s 4 on the back of which were made endorsements regarding the publication. These entries are in Urdu. In the first instance, all the counsel filed an agreed translation of these entries which is as follows : "Received one copy of the notice and has been affixed at a prominent place. 17-11-61" "Proclamation by beat of drum will be made. 21-11." Sir, It is submitted that one notice of Land Acquisition Collector has been affixed outside the Court of the Deputy Commissioner, Delhi, one notice at Kashmere Gate Tehsil, one handed over to Nambardar of village Naraina for affixing in the village. The report is accordingly submitted. Sd..00 Daryao Singh. 21-11-61." The portion of the first entry (other than what has been underlined above) and the second entry are in black ink. The underlined portion of the first entry and the third entry are in the hand of Daryao Singh and are in blue ink.

(59) When the above record was produced learned counsel pointed out the above discrepancies. Since there was a difference in ink and the underlined portion in the first entry appeared to have been added by Daryao Singh above mentioned, we thought that the matter called for clarification. Thereupon, counsel for the respondents filed an affidavit dated 23-5-1978 from Daryao Singh, who was at the relevant time a peon in the Land Acquisition office. This affidavit is very short and is to the following effect : "(1) In November, 1961, I was a Peon in the Land Acquisition Office. (2) I was directed in November, 1961 to have notices u/s 4 of the Land Acquisition Act relating to acquisition of land at Naraina, published. I went to Naraina on 21-11-61 and gave one copy of the notice to the Lamberdar and obtained his receipt. He affixed the notice in the Chopal in my presence and I made an enforcement of affixation. (3) Thereafter, I affixed notices in the office of the Land Acquisition Collector in the office of the Deputy Commissioner, and in the office of the Tehsil at Kashmere Gate and made a report. (4) I have seen the three Urdu writings in the file relating to the acquisition of land at Naraina. In the

first writing there is an endorsement of the Lamberdar acknowledging receipt of the copy of the notice. After that notice was affixed in the Chopal, I recorded in continuation of the acknowledgment of the Lamberdar in his presence and with his consent and knowledge that the notice was affixed. The second writing in the hand writing of the Lamberdar to the effect that the notice would be proclaimed by beat of drum through a Chowkidar of the Village. The third writing is my report".

(60) The matter came up again for hearing but by this time counsel for the petitioners/appellants had an opportunity to look into the records and also to peruse the above endorsements. At this time Sri G.S. Vohra submitted that the translation furnished on the earlier occasion appeared to be incorrect in material particulars. So we got the matter translated by the Court translator and the translation thus produced was to the following effect :

"RECEIVEDone copy. I shall affix the same to some conspicuous place. sd/- Illegible 21-11. " "The proclamation shall be got done through the Chowkidar. sd/- Illegible 21-11. " "Sir, It is submitted that one copy of the notice has been affixed outside the Court of the Land Acquisition Collector; one copy of the notice has been affixed out-side the court of Deputy Commissioner, one copy of the notice has been affixed outside the Tehsil office at Kashmere Gate, and one copy has been got affixed at the spot in village Naraina through the Lumberdar. The report is submitted. sd/- Illegible 21-11-61"

It will be seen that this translation differs from the earlier one in certain material respects. The first is that the date of the first entry is not 17-11 but 21-11-61. We have also seen the original and we have satisfied ourselves that the date in that entry is not 17/11 but 21-11. The second difference is that in the first entry, the addition made in the hand writing of Daryao Singh is : "I shall affix the same to some conspicuous place and not has been affixed at a prominent place". Similarly, in the third entry, while the first translation says that one copy of the notice had been handed over to the Lumberdar of the village for affixation in the village the present translation reads : "One copy has been got affixed at the spot in village Naraina through the Lumberdar".

(61) On behalf of the petitioners appellants it is contended that apparently what happened was that Daryao Singh, who was entrusted with the job of publishing the notification in accordance with law, had handed over one copy of the same to the Lumbardar and had asked him to affix it at a prominent place in the locality. He also directed him to have the proclamation got done through the Chowkidar. Having done this, he had reported to the above effect. The present affidavit of Daryao Singh to the effect that the notices had been affixed in the Chopal of the village in his presence was a mere after thought and should not be accepted.

(62) We have carefully pursued the original and we have also placed a photostat copy of the original on the record at the request of the petitioners/appellants. We have also had the Urdu report read out to us by the counsel who are familiar

with Urdu script. We have come to the conclusion that there is nothing suspicious about the entries made in the record and that the report sufficiently discloses the fact of publication in the village. Originally, when we first looked at the report, it appeared that in the first entry which was apparently made by the Lumbardar on 17-11-61 by Daryao Singh had added some words later on 21-11-61. The first entry appeared to be dated 17-11-61 and the entries could be interpreted as recording that Daryao Singh had merely handed over the copy of the notice to the lumbardar on 17-11-61 and that later on, he Submitted a report stating that it had been so handed over. This would not be sufficient compliance with the provisions of the statute. But it is obvious that this is not a correct translation. From the official translation, it is seen that the first entry is also dated 21-11-1961. In fact all the three entries are on the same date. The first entry indicates that, when the notice was handed over to the Lumbardar obviously for affixation he endorsed an acknowledgment of receipt therefore. But Daryao Singh considered this insufficient and added also an endorsement that the latter would also affix it to some conspicuous place. This was done on the same day and in any event, the addition is immaterial as it only says that the notice will be affixed, not that it has been affixed. So, there is no reason to suspect any mala fides in this interpolation which adds nothing to the entry in the context of the statutory requirements. The second entry similarly records the Lumbardar undertaking to proclaim by beat of drum. The third entry shows that after the affixation in the village and the other affixation necessary under the Statute had been completed, Daryao Sing gave a report of compliance. This is quite a reasonable and direct construction of the three entries in the report. As rightly pointed out by Sri Lokur it should be presumed that official acts are properly and correctly done vide Section 114(e) of the Evidence Act and this presumption is also brone out by the above record.

(63) The affidavit of Daryao Singh also substantially bears out the above version. There is only one slight discrepancy pointed out by the counsel for the petitioner. In regard to the entry Sri Daryao Singh states in his affidavit : "He affixed the notice in the Chopal in my presence and I made an endorsement of affixation". Similarly in para 4 he states that after notice was affixed in the Chopal I recorded in continuation of the endorsement of the Lumbardar in his presence and with his consent and knowledge that the notice was affixed. It is pointed out that the correct version of the first entry in the hand of Daryao Singh is to the effect "I shall affix the same to some conspicuous place". It is Therefore argued that this entry and Therefore the statement in the report (third entry) had been made by Daryao Singh after merely handing over the notice to the Lumbardar and without waiting to see whether the notice had been properly affixed or not. We do not think that much significance can be attached to this discrepancy in the report. It should be appreciated that the affidavit of, Daryao Singh is made in 1978 and is based on a reading of the record coupled with his recollection as to what happened. The discrepancy has arisen because the Urdu words in the first entry of the original report are not quite clear. According to a transliteration (in to

English) got done by the Court Registry, the last word of the first entry read : "Chaspan Karoonga" (future tense). But apparently, both Daryao Singh and the Advocates (some of whom also know Urdu script) who had furnished the translation earlier read it as "has been affixed." We are told that the script is capable of being read both ways. Perhaps Daryao Singh, being the scribe, is the best person to say what he wrote and if his version is accepted, there is no discrepancy at all. But even if the official translation should be taken. We do not see anything suspicious in the mistake made by Daryao Singh in his affidavit based on a wrong reading of the entries. Moreover, the essential part of the endorsement is only the third entry. This clearly states that the notice had been got affixed at the spot in village Naraina through the Lumbardar. We are Therefore of opinion that we should accept the record as showing that a copy of the notice was affixed at a conspicuous place in the locality in which the lands proposed to be acquired were situated. The only objection taken by Sri Dhamija is that the notice was not shown to have been published at a conspicuous place in the village and for the reasons given above, we reject the same.

(64) We should like to add that this objection based on the entries in the report, had not been addressed before Prithvi Raj J. It was urged for the first time only in the appeal and Sri Lokur rightly objected to its being allowed to be raised. We would not have also permitted this objection to be raised but for the fact that when we happened to look at the record there was a discrepancy in ink and certain apparent discrepancies in the entries and we felt that the interests of justice required that we should go deeper into the matter and satisfy ourselves that there was no interpolation in regard to such an important document. Having scrutinised the documents carefully, considered the Urdu and English versions provided from different sources and heard the contentions of learned counsel on both sides, we are satisfied that there is nothing wrong with the entries and that the record shows that Daryao Singh had got the notice affixed at a prominent place in the locality. There is Therefore no vitiating element so far as this aspect of the matter is concerned. The contention of Sri Dhamija (which was also adopted by Shri Vohra and Shri Lekhi) Therefore fails.

(65) Another point raised by Shri Dhamija is that in the present case, there was no satisfaction recorded by the L.G. that the land is needed for a public purpose as contemplated in Section 6 of the 1894 Act. Here again learned counsel relied upon the relevant entries in the concerned file. We have obtained, at the suggestion of the counsel, a photostat copy of this page of the file and placed it on record. It starts with a note by the office referring to the proposal of acquisition, the objections received u/s 5A and the report of the Collector on the objections. There is then a short note to the following effect : "Most of the lands of the village covered u/s 4 Notification for 34070 acres have already been acquired for Naraina Residential Scheme of the D. D. A. This chunk is still lying undeveloped and haphazard growth of unauthorised constructions is going on there. It cannot be left undeveloped to be converted into slums by the land/ plot owners. It is Therefore imperative that this area is acquired as early as possible."

This is followed by a suggestion that "the objections were of routine/ general nature" which could be ignored. Then follows a request. Draft added below may Therefore issue please. This note was put up to the L.G. through the Special Secretary and the Housing Commissioner (N.C.). Whom this note reached one of the officials made a note : "These objections may kindly be rejected and final notification u/s 4 of the Land Acquisition Act issued". The file was then put up to the Lieutenant Governor who wrote : "Objections rejected" and signed it. Thereafter there is an endoresement by the above official "Please issue". There is also the signature by the other official.

(66) The argument of Sri Dhamija is that the file has been put up to the Lieutenant Governor for two purposes. The first was for the rejection. of the objection that had been put forward u/s 5A. The second purpose was for orders regarding the issue of the declaration u/s 6. Sri Dhamija contends that the record shows that the L.G. approved of the first suggestion, namely, that the objections should be rejected but he did not apply his mind at all to the second suggestion that a declaration u/s 6 should issue. He submits Therefore that the satisfaction that the lands were required for a public purpose was not arrived at by the Lt. Governor and that he has not directed the issue of declaration u/s 6.

(67) The argument is attractive but we do not think it can be accepted. The proceedings of the L.G., it seems to us, cannot be dissected in the manner suggested by Sri Dhamija. A notification u/s 4 had been issued in 1959. A good portion of the land had already been acquired. It was found that the chunk of land now proposed to be acquired was being misused and that it was necessary to acquire it as early as possible. The objections were considered to be not maintainable in view of the report of the Collector and in view of the analysis made of the various objections by the office note. In the light of these facts, a draft declaration was put up and the file was submitted to the L.G. with a proposal that the objections be rejected and draft proposed be approved. In other words, so far as this particular matter was concerned, The rejection of the objections by the L.G. also automatically meant that he was satisfied that the land was required for a public purpose. It is perhaps conceivable that cases may arise where, as pointed by Sri Dhamija, the rejection of objections might not necessarily lead to the issue of a declaration under Sec. 6 e.g. it may be that the objections raised are flimsy, irrelevant and so liable to be rejected ; but, at the same time there may be some facts or reasons set out in the report of the Collector which render the issue of declaration unnecessary or not possible. To give an illustration, it may be that an extent of land is sought to be acquired for purposes of a public school. The land owners may object on the ground that each of them is holding a small piece of land and that deprivation thereof would cause him enormous hardship. This may be found to be no ground for not acquiring the lands. But it is quite possible that the Collector may report that, after the date of the notification u/s 4, another big school had come into existence in the locality, and that, Therefore, the acquisition of these lands was no longer necessary. In such cases the rejection of the objections may not be followed by the L.G. with a

direction to acquire the land. But such academic illustrations are not helpful in construing the section. What is required is to see whether there is a substantial compliance with the requirement in the Act that L.G. should satisfy himself that the acquisition of the land was necessary. In the present case, having regard to the whole tenor of the note put up to him and having regard to the fact that the L.G. has specifically rejected the objections, it must necessarily follow that he was satisfied that the lands were needed for a public purpose. If inspired by having rejected the objections, the L.G. had not been thus satisfied, he would have specifically directed that, though the objections were rejected, the declaration should not issue.

(68) Shri Dhamija referred to the decision of Rangarajan J. in *Shori Lal Jain Vs. Lt. Governor, Delhi and Others*, emphasising the importance of the satisfaction of the L.G. and holding that L.G. could not delegate this duty to his Secretary or anybody else. That was a case in which it was found as a fact that the concerned file had not been put up to the Lt. Governor at all by some mistake. In the present case the facts clearly show that the L.G. considered the matter and was satisfied in terms of Section 4. We, Therefore, reject Shri Dhamija's contentions.

(69) For the reasons discussed above, the L. P. Appeals and Writ Petitions fail and are dismissed. There will, however, be no order as to costs.