

(2006) 03 BOM CK 0088

In the Bombay High Court

Case No : Writ Petition No's. 1956 of 1994 and 1384 of 1997

Reliance Industries Ltd. and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 11, 12, 16, 18, 23

Citation : AIR 2006 Bom 213 : (2007) 3 BomCR 881 : (2006) 3 MhLj 739

Hon'ble Judges : V.M. Kanade, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : Milind Sathe and Alpana Ghone, instructed by A.S. Dayal, for the Appellant; A.A. Kumbhakoni, Associate A.G. and Geeta Shastri, Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Since common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common judgment.

2. The subject-matter of the Writ Petition No. 1956 of 1994 is the premises admeasuring 1478 sq. meters on the 3rd floor of the building "Reliance Center" at 19, Walchand Hirachand Marg, Ballard Estate, Bombay. By order dated 23rd January, 1970 passed by the Controller of Accommodation under the provisions of Section 6(4)(a) of the Bombay Land Requisition Act, 1948, hereinafter called as "the Requisition Act", it had requisitioned the said premises and allotted the same to Anti Corruption Bureau, Prohibition and intelligence Bureau of the Government of Maharashtra and was also partly occupied by Deputy Controller of Rationing, Region-A, Department of Civil Supplies. Writ Petition No. 1679 of 1991 came to be filed by the petitioner challenging the requisition order dated 23rd January, 1970 in view of the judgment of the Supreme Court disapproving withholding of requisition property for an unreasonable period of time. Pending the said writ petition, a notification u/s 4 of the Land Acquisition Act, 1894,

hereinafter called as "the said Act", came to be issued disclosing the intention to acquire entire 3rd floor premises admeasuring 167.50 sq.meters in the suit building. Notice was also issued on 28th December, 1992 which were received by the petitioners on 2nd January, 1993 in relation to the said notification u/s 4 for the purpose of inquiry u/s 5A of the said Act. The petitioners took out Notice of Motion No. 45 of 1993 in Writ Petition No. 1679 of 1991 seeking amendment to the writ petition to incorporate the challenge to the land acquisition proceedings. On 18th February, 1993, an addendum was issued u/s 4 clarifying acquisition to be in relation to 577.47 sq.meters of the 3rd floor. The petitioners filed their objections on 18th February, 1993. The Notice of Motion taken out in the said writ petition was disposed of with liberty to the petitioners to challenge the proceedings independently. The petitioners filed further objections to the proceedings on 5th March, 1993. The respondents issued declaration u/s 6 of the said Act on 23rd June, 1994 confirming that the premises were being acquired to satisfy the need of the premises for Food and Civil Supplies Department in order to accommodate rationing office. The notice u/s 9 came to be issued on 29th July, 1994 which was received by the petitioners on 2nd August, 1994. The petitioners thereupon filed "he present petition.

3. In Writ Petition No. 1384 of 1997, the 1st petitioner is the lessee of the land and building known as "Express Building" at Plot No. 18, Block No. 1, Back Bay Reclamation, Bombay, in terms of a registered Lease Deed dated 13th March, 1956 granted by the Governor of Bombay of which the 2nd floor comprises of subject-matter of the petition and the same admeasures 4500 sq.ft. in area. By order dated 25th September, 1968, the said premises were requisitioned for housing the State Government Office and allotted to the 5th respondent viz. Controller of Rationing, Food and Civil Supplies Department. Since the requisitioning of the premises was continued for unduly long period, the petitioners filed Writ Petition No. 2269 of 1992 and the same was admitted for final hearing. During the pendency of the said petition, a notification u/s 4 of the said Act came to be issued on 24th December, 1992 for acquisition of the said premises describing the same to be admeasuring 325,15 sq.meters in area (3500 sq. ft.) being needed for Food and Civil Supplies Department to accommodate the 5th respondent. The petitioners lodged objections on 29th January, 1993. Without hearing the petitioners, the report u/s 5 of the said Act was submitted by the 3rd respondent to the State Government and declaration u/s 6 of the said Act thereupon came to be issued on 6th June, 1994 beyond the period of one year from the date of publication of the notification u/s 4. Further notice u/s 9 came to be issued on 29th July, 1994 but the said was not served upon the 1st petitioner. The advocate for the petitioners therefore addressed the letters dated 21st September, 1995, 28th September, 1995 and 13th December, 1995. On 3rd July, 1996, in the course of hearing of the Writ Petition No. 2269 of 1992, a statement came to be made on behalf of the respondents that the notification u/s 6 was being withdrawn and the said statement was recorded by the Court on the said day, while rejecting the petition as withdrawn. A fresh

notification u/s 4 came to be issued thereafter on 28th July, 1996 in relation to the entire premises of the 2nd floor admeasuring 345.18 sq.meters in area (3714.14 sq.ft.). The petitioners filed their objections under letter dated 29th October, 1996 and requested for personal hearing, and after personal hearing given to the petitioners, the declaration u/s 6 came to be issued on 17th April, 1997, followed by the notice u/s 9 dated 23rd July, 1997. Under the letter dated 8th August, 1997, the 1st petitioner informed the respondents that they were not aware about the declaration u/s 6 and further requested for copy of the report submitted by the 3rd respondent to the Government, consequent to the inquiry u/s 5A of the said Act. The petitioners thereupon filed the present petition.

4. In both these petitions, the important point which is sought to be raised, is whether in exercise of powers under the said Act, the acquiring body is empowered to acquire a building or a part of the building without acquiring the land underneath and appurtenant to such building? As a prelude, it would be necessary to ascertain the true import and meaning of the expression "land" as defined under the said Act, and to ascertain whether a building or a part of the building, sans the land underneath and/or appurtenant thereto, can constitute expression "land" for the purpose of acquisition under the said Act?

5. The learned Advocate appearing for the petitioners taking us through the provisions of the said Act, has submitted that the power of acquisition under the said Act is in relation to the land, and the land would include all things attached to it or found thereon but the said Act does not authorise acquisition merely of the benefits or advantages or interests in or arising out of land, de hors the land. Referring to Section 16 of the said Act, it was sought to be argued that on acquisition of the land, it vests free from encumbrances in the Government. This provision clearly discloses that the acquisition has necessarily to be of such a thing which would vest free from encumbrances in the Government. According to the learned Advocate appearing for the petitioners, this is further clear from the provisions of Section 49 of the said Act which clearly gives option to the land owner to insist for acquisition of the entire property when only a part of the property is sought to be acquired. Reliance was sought to be placed in *Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others*, . *The State of Kerala v. P. P. Hassan Koya* reported in AIR 1968 SC 1201, *Secretary of State Vs. Allahabad Bank Ltd.*, , *Government of India and Another Vs. C.A. Balakrishnan and Others*, , *Makhan Lal and Others Vs. Secy. of State* , *T. L. Prakash Ram Rao v. The District Collector, Anantpur and Ors.* reported in AIR 1994 NOC 195 (A. P.), *Ebrahim Aboobaker and Another Vs. Tek Chand Dolwani and Others*, , *Dasarath Sahu and Ors. v. The Secretary of State for India in Council* reported in (1916) 35 I C 97, *Raja Shyam Chandra Mardaraj Harichandan Raj Narain Das and Ors. v. The Secretary of State for India in Council* reported in (1908) 7 CLJ 445, *Grahak Sanstha Manch and others Vs. State of Maharashtra*, , *The Government of Bombay v. Esufali Salebhai* reported in (1909) 12 BLR 34, *Kiran Tandon Vs. Allahabad Development Authority and Another*, , *R. Umraomal and Others Vs. State of Tamil Nadu and Another*, , and *Bai Malimabu and Others*

Vs. State of Gujarat and Others, .

6. On the other hand, it is the contention of the learned Associate Advocate General that the definition of the land, as set out in Section 3(a) of the said Act, is an inclusive definition, and it demonstrates the legislative intention to define the expression "land" in a more extensive manner. The inclusive definition has to be understood without any restriction upon the term defined, and therefore, the term "land" would comprehend all those things which the clause defines, and therefore, even a part of the building, sans the land, would be permissible to be acquired in exercise of powers under the said Act. In fact the said Act itself contemplates the acquisition of not only a building but even a part thereof. Section 49 of the said Act does not make it mandatory to acquire land on which the part of the building is situated. There is nothing in the Act which can remotely suggest that a part of a building specified u/s 49 contemplates acquisition of the land underneath the building. The term "encumbrances" appearing in Section 16 of the said Act has to be understood in its proper perspective and it means a claim, lien or liability attached to the property, such as mortgagee, easement etc. In law, encumbrances mean a charge or burden on the property. The rights of third party such as an easement, mortgage, lease, sublease come to an end once the land vests u/s 16 of the said Act. The persons who are holders of such encumbrances are obviously entitled to claim compensation. Reliance was placed in the decision in the matter of *Mrinalini Roy Ratna Prova Mondal and another Vs. State of West Bengal and others*, , *Jagannath Ganeshram Agrawal and Anr. v. State of Maharashtra and Anr.* reported in 1986 Mh.LJ. 87, *P. Kasilingam and others Vs. P.S.G. College of Technology and others*, , *S.K. Gupta and Another Vs. K.P. Jain and Another*, , *Forest Range Officer and Ors. v. P. Mohammed Ali and Ors.* reported in 1995 Supp. (3) SCC 627 , *Pasupati Roy Vs. State of West Bengal and Others*, , *Baraset Basirhat Light Railway Co., Ltd. Vs. Nrisingha Charan Nandi Chowdhury*, , *State of Bihar and Another Vs. Kundan Singh and Another*, , AIR 1939 235 (Privy Council) and *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad*, .

7. In order to understand the scope of the powers of the acquiring body in relation to the subject matter of the acquisition under the said Act, it would be necessary to take note of the scheme of the said Act as well as the nature and object of the said Act.

8. The object and intention of the legislature in bringing about the said Act is to provide a speedy remedy for determination of compensation to be paid for the land acquired for the public purposes as well as to provide necessary modalities for acquisition of the land for public purposes. The said Act authorises the Government to compulsorily acquire private land for public purposes as well as to determine the amount of compensation payable to the owners or persons having interest in such land on account of acquisition thereof. While it provides for different modalities including by way of negotiations for the purpose of

acquisition of the land, simultaneously, it provides for machinery for compensating the interested persons who are divested of their land.

9. The scheme of the said Act at once discloses necessary safeguard to be taken while taking recourse to divest someone of his land as well as need for sufficient opportunity to establish his claim for the loss suffered by him therefrom. The acquisition of land thereunder commences with a notification disclosing intention to acquire the land for a specified public purpose. It is followed by an opportunity to object to such acquisition including to dispute the purpose being of public nature and an inquiry in that regard is followed by a report of the Inquiry Officer to the Government. On consideration of the report, the Government decision, in case of insistence for acquisition, is to be made public by a declaration to be issued in that regard u/s 6 of the said Act within the specified time from the date of publication of the notification u/s 4 of the said Act. It is to be followed by an opportunity to the interested persons to put forth their claim regarding compensation in answer to notice u/s 9 of the said Act. On consideration of such claim, the Land Acquisition Officer is required to prepare the draft award fixing compensation to be offered to the persons interested in the land under acquisition. The Government is required to take appropriate precaution while approving the draft award and once the approval is granted, the officer is required to declare the award u/s 11 of the said Act and thereafter the Government to pay compensation accordingly to the persons interested, consequent to the notices being issued u/s 12 of the said Act. In case the person interested is dissatisfied with the compensation awarded or regarding the measurement of area or apportionment, he can, within specified time, request for reference of the matter to the Civil Court for adjudication of such dispute. On reference of such matter to the Court, the parties are to be afforded sufficient opportunity to lead evidence in support of their rival contentions and based on such evidence, the Court is expected to decide the dispute by pronouncement of the award. Sections 23 and 24 of the said Act enumerate various factors to be taken into consideration while fixation of the compensation by Reference Court. The decision could be challenged in appeal. It also provides for the facility for private negotiations by the Collector with the owner and if the terms agreed upon are approved by the Government, to get the title of the property conveyed in favour of the Government. On pronouncement of the award and after taking possession of the acquired land, the title of the property stands vested free from encumbrances in the Government on taking of possession of the acquired property. The said Act also provides for release of land, either in entirety or part thereof, any time prior to taking over the possession thereof. It also provides for the applicability of the provisions of the CPC to the proceedings before the Court under the said Act to the extent those provisions are not inconsistent with the provisions of the said Act. While every award passed by the Court under the said Act is deemed to be a decree under the Code of Civil Procedure, the agreement between the owner and the Collector arrived at under Part VII of the said Act on publication thereof in the Official Gazette assumes character of a deed of

conveyance of the title in the property. There are also provisions in the said Act for temporary occupation of land in cases where it is waste or arable land.

10. The preamble of the said Act provides that "whereas it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such compensation." The expression "land" has been defined in Section 3(a) of the said Act to include benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth. In fact, Section 3(a) of the said Act reads thus:--

3. In this Act, unless there is something repugnant in the subject or context,--

(a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

While the expression "arable land" is defined to mean land fit for cultivation, whether in fact cultivated or not, or includes garden land. The expression "person interested" is defined to include all persons claiming an interest in compensation to be made on account of the acquisition of land under the said Act and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

11. In Reserve Bank of India case (supra), the Apex Court ruled that interpretation must depend on the text and the context and if the text is the texture, context is what gives the colour, therefore, neither can be ignored. The interpretation is best which makes the textual interpretation match the contextual. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

12. The Apex Court in P. Kasilingam's case (supra) held that "The use of the word "means" indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition. The word "includes" when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions".

13. In M/s Taj Mahal Hotel's case (supra), the word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the Statute and that the words and phrases must be accordingly construed as comprehending not only such things as they signify

according to their nature and import but also those things which the interpretation clause declares that they shall include.

14. In *S. K. Gupta's case* (supra), the Apex Court held that where in a definition clause, the word "include" is used, it is so done in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used, these words or phrases must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. Where the definition of an expression in a definition clause is preceded by the words "unless the context otherwise requires", normally the definition given in the section should be applied and given effect to but this normal rule may, however, be departed from if there be something in the context to show that the definition should not be applied. It was also held that the frame of any definition more often than not is capable of being made flexible but the precision and certainty in law requires that it should not be made loose and kept tight as far as possible.

15. In *P. Mohammed Ali's case* (supra), the Apex Court held that it is settled law that the word "include" is generally used as a word of extension. When used in an interpretation clause, it seeks to enlarge the meaning of the words or phrases occurring in the body of the statute. An interpretation clause of the inclusive definition is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that word would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to something to which it would not ordinarily be applicable.

16. Bearing in mind the rules of interpretation, decision referred to above, and on plain reading of the definition of the term "land" as found in Section 3(a) of the said Act, therefore, would reveal that it nowhere defines the term in the sense what the land means, but it specifies that the term "land" is inclusive of things enumerated under the said Clause (a) of Section 3. Undoubtedly, therefore, the definition of the term "land" as found in Section 3(a) is "inclusive" one.

17. The definition of the term "land" under Clause (a) of Section 3, however, is of such a nature that it does not give any indication that the things enumerated, as forming part of land by themselves singularly and independently would be "land" within the meaning of the said expression under the said Act. At the same time, it discloses that the term "land" would include all benefits arising out of land described for the purpose of acquisition as well as the things attached or permanently fastened to anything attached to the earth. In other words, while all the structures or the trees or any material attached or fastened to the land sought to be acquired would also be the subject-matter of acquisition along with such land, but it nowhere discloses that without the land to which the things attached or permanently fastened, such things by themselves independently and singularly could be the subject-matter of acquisition under the said Act. This is

apparently clear from the definition of the term "land" as the legislature in its wisdom has excluded to define the said term "to mean" and has restricted to describe it as inclusive of the things enumerated in the said clause.

18. Undoubtedly, when the term is described "to include", various specified things, it would enlarge the meaning of the expression defined, so as to comprehend not only those things as could be identified according to the natural import of the term but also those things which the clause declares to be inclusive of. In that sense, the term "include" would suggest definition to be exhaustive and extensive. However, the interpretation of a term cannot be by merely referring to a word here or the word there in the statute. It has to be textual and contextual and therefore, no part of a statute and no word of a statute can be construed in isolation. The same has to be construed looking to the statute as a whole, in the context of its enactment, sections, sub-sections, clauses, phrases and words, as they may take colour and appear different when the statute is looked at without the glasses provided by the context. The Apex Court has clearly observed that if a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, in the sense, the sections, clauses, phrases and words may take different colour and appear different than when the statute is looked at without the glasses provided by the context, and therefore, the statutes have to be construed so that every word has a place and everything is in its place. In that sense, it is said that the interpretation must depend on the textual and the contextual.

19. The law on the point that the interpretation has to be contextual is well settled by the decision of the Apex Court in Reserve Bank of India's case (supra). A statutory provision has to be understood in the context in which it is used by the legislature. Simultaneously, the purpose behind the statute as well as the principal provision which is under interpretation is also to be borne in mind. The very object of the said Act is to provide for modalities for acquisition of land and simultaneously for the procedure to compensate those persons who are divested of their lands as a result of acquisition. At the same time, acquisition has to result in conveying a clear title free from encumbrances in favour of the Government. Considering the same and that mere benefit arising from the land would not result in giving clear permanent title free from encumbrances in relation to the land itself, the term "land" is consciously excluded to be defined to mean only limited interest in the land, and on the contrary, it is defined as the whole of interest in the subject sought to be acquired under the said Act.

20. Bearing in mind the law laid down by the Apex Court in relation to the textual and contextual interpretation, each and every provision in the said Act gives an indication that the subject matter of acquisition under the said Act could be the land and the land as a whole in the sense that there cannot be a acquisition of limited interest in land but it has to be the whole of land including the things attached or permanently fastened thereto as well as benefits arising therefrom, but it cannot be merely the benefits arising out of or the things attached or

permanently fastened to land without acquiring the land itself.

21. All the provisions in the said Act unequivocally refer to and disclose the intention of the legislature that the subject-matter of the acquisition has necessarily to be the "land" and the land to be acquired would include all benefits arising therefrom as well as the things attached and permanently fastened thereto, but, would not be merely a benefit arising out of land or things attached to or permanently fastened to land with the exclusion of "land" itself.

22. In *Mrinalini Roy Ratna Prova Mondal*'s case (supra), the Apex Court while dealing with the contention that the term "land" as defined u/s 3(a) of the said Act does not include fisheries, held that the expression "land" includes benefits to arise out of land and, things attached to the earth or permanently fastened to anything attached to the earth. Tank fisheries cannot survive independent of the tank and there cannot be a tank without the land. Therefore, the expression "land" is required to be understood in that perspective when the tank fisheries are sought to be acquired. Tank fisheries would be a benefit to arise out of the land. It was also observed that prior to the Amendment Act, 1981, tank fisheries were not expressly brought within the definition of land.

23. In *Bai Malimabu*'s case (supra), the Apex Court, while rejecting the argument that the notification u/s 4 specified the land but did not refer to the superstructures standing thereon, and that therefore, would not be a subject matter of acquisition proceedings, held that the definition of "land" under the said Act includes the superstructure, if any, existing upon it and it was not the requirement of the law to mention the structure, if any, separately in the notification,

24. In *M/s Harsook Das Bal Kishan Das*'s case (supra), the Apex Court, considering the definition of the term "land", held that it includes the benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth and therefore, the land contemplated u/s 49(2) of the said Act may be land or land including building or part of a building.

25. Our High Court in *Esufali Salebhai*'s case (supra) had observed that the said Act substitutes a compulsory, for a contractual, acquisition of land, where it is required for a public purpose. The object is to get at the land for a public purpose, and the word "land" has a definition expressly given to it in the said Act, which is not exhaustive. The use of inconclusive verb "includes" shows that the legislature intended to lump together in one single expression - viz., "land" - several things or particulars, such as the soil, the buildings on it, any charges on it, and other interests in it, all which have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the said Act may requires.

26. In *P. P. Hassan Koya*'s case (supra), the Apex Court held that the purpose of acquisition is to acquire all interests which clog the right of the Government to full ownership of the land i.e. when land is notified for acquisition, the

Government expresses its desire to acquire all outstanding interests collectively. By the compulsory acquisition of land, all outstanding interests not vested in the Government stand extinguished.

27. In Jagannath Ganeshram Agrawal's case (supra), this Court while dealing with the contention that in Maharashtra neither under the Bombay Land Requisition Act nor under the Land Acquisition Act as applicable to the State of Maharashtra, there is any provision to acquire a part of the building, and held that though there is no such provision under the Bombay Land Requisition Act, the definition of the word "land" in the said Act would disclose even a part of the land as also a part of the building can be acquired, and in that connection had made reference to Section 49 of the said Act. The Division Bench therein was dealing with the issue as to whether the requisition of certain buildings made under the Bombay Land Requisition Act more than 25 years ago could validly be continued?

28. The Calcutta High Court in Raja Shyam Chandra Mardaraj Harichandan Raj Narain Das's case (supra), while holding that fishery rights are not land within the meaning of the said Act, has held that what is to be acquired under the said Act is an aggregate of rights in the land and not merely some subsidiary right as fishery right.

29. In Pasupati Roy's case (supra), the Calcutta High Court held that the fish as defined in West Bengal Fisheries (Requisition and Acquisition) Act, 1965 is property which is capable of being owned and possessed and transferred and as such it may be the subject-matter of an order of requisition like any other property.

30. In Baraset Basirhat Light Railway Company Ltd. 's case (supra), the Calcutta High Court held that the word "encumbrance" has not been defined under the said Act but it would mean a claim, lien, liability attached to property, as a mortgage, etc., and it means some burden created by acts or omission of human beings. It does not mean a burden or obligation created by nature.

31. In R. Umraomal's case (supra), the Madras High Court, considering the fact that the Government was already the owner of the land, held that it was permissible to acquire only the superstructures which stood on the said land.

32. In Allahabad Bank's case (supra), the Allahabad High Court held that in order that proceedings under the said Act should be taken, the Government is bound to acquire the land and they cannot claim to acquire merely the buildings standing on the land.

33. In T. L. Prakash Ram Rao's case (supra), the Andhra Pradesh High Court has held that it would not be open to the Government to acquire anything apart from the land.

34. The Patna High Court in Dasarath Sahu 's case (supra) held that though the term "land" in Section 3(a) of the Land Acquisition Act is defined as including

things attached to the earth, the Act does not contemplate the acquisition of things attached to the land without the land itself and it is only the land including the rights which arise out of it, and not merely some subsidiary right, which is capable of acquisition under, the Act.

35. In Makhan Lal's case (supra), it was held that when a District Judge acts on a reference by the Collector u/s 18 of the said Act, he is acting as a Court and not as a persona designata, and in a reference by the Collector, when title to land is claimed on behalf of the Government and the same is disputed by the claimants, the District Judge is empowered to decide the question of title on the basis of the evidence led before him.

36. The Apex Court in Grahak Sanstha Manch's case (supra) had held that the concepts of acquisition and requisition are altogether different as are the consequences that flow therefrom.

37. The decision of the Apex Court in Kiron Tandon's case (supra) was in relation to the issue as to what method for determining the value of the property should be adopted when the land is comprised of buildings, trees or some other additions of like nature, and secondly as to whether a claimant who is only a lessee of the acquired land would be entitled for the amount of compensation.

38. The Apex Court in Nusserwanji Rattanji Mistri's case (supra) has held that the word "encumbrance" in section 16 of the said Act can only mean interests in respect of which a compensation can be awarded u/s 11, and it would not include the right of the Government to levy assessment on the land.

39. In Kundan Singh's case (supra), the Apex Court while dealing with the provisions of law comprised u/s 49 of the said Act held that the objections intended to be raised u/s 49 to the acquisition of a part of the house, it must be made before an award is made and it should be made soon after the initial notification published u/s 4 otherwise, if the proceedings under the relevant provisions of the said Act are allowed to be taken and an award is made, it would create unnecessary confusion and complications if the owner at that stage indicates that he objects to the acquisition of a part of his house.

40. In Hari Chand's case (supra), the Privy Council, while dealing with the issue as to whether notification issued was bad because it was not a notification for acquisition of a land, as the intention disclosed was to acquire only buildings on the land, held that the Government themselves being the owners of the site, it would be manifestly idle for them to have proposed to acquire what was already owned by them, and therefore, it was but natural that the requisition order in relation to the building on the land was sought to be enforced.

41. Section 49 of the said Act, a reference to which has been repeatedly made by the learned Associate Advocate General appearing for the State, may appear to give indication to the effect that the subject-matter of acquisition under the said Act could be even a limited interest in the land. However, the proper reading of

the said section would reveal that it nowhere indicates any such intention on the part of the legislature.

42. Section 49(1) provides that the provisions of the said Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired provided that the owner may, at any time before the Collector has made his award u/s 11, by notice in writing, withdraw or modify, his expressed desire that the whole of such house, manufactory or building shall be so acquired, and provided further that, if any question shall arise as to whether any land proposed to be taken under the said Act does or does not form part of a house, manufactory or building within the meaning of the said section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined. At the outset, it is to be noted that the main part of the provision is couched in the negative phraseology. It prohibits the acquiring body from acquiring a part only of any house or building when the owner objects to such acquisition and insist for acquisition of the entire house or building. Evidently, therefore, the provisions u/s 49(1) are not in relation to the extent of power regarding the acquisition under the said Act but the same relate to the restrictions imposed upon the power of acquisition under the said Act, when the power to acquire land already exists under the said Act. Section 49 does not permit to exercise such power for the acquisition of a part of house or building when the owner calls for acquisition of the entire building or house. Undoubtedly, such restriction is qualified by providing that the same would be only in cases where there is objection on the part of the owner for acquisition of part of the house or building. However, that would not lead to conclusion that a part of house or a part of building would mean that the same excludes the land underneath or appurtenant to such house or building. On the contrary, the second proviso would indicate that there is no scope to have any such presumption or assumption. In fact, such land will have to be considered as forming part of such house or building and if any dispute arises as to whether a particular land which is to be considered as forming part of such houses or building, the same will have to be referred to the Court for adjudication and till then the possession of such land cannot be taken. It would indicate, by all means, that a part of house or building which can be acquired in the absence of objection in the regard by the owner would necessarily include the land underneath or appurtenant to such part of house or building.

43. It cannot be also disputed that the concept of dual ownership in India is well settled. While land can belong to one person, structure therein can be owned by other. However, that cannot be of any help to construe the term "land" under the said Act to mean any such limited interest. Once the land is acquired, it would vest free from encumbrances in the Government. All things attached to such land would also vest to the Government. All benefits arising out of such land would also vest in the Government. Being so, merely because there is dual ownership, it would not mean that the acquisition proceedings under the said Act could be of

limited interest in the land.

44. Undoubtedly, there are also instances where a land belongs to Government whilst the structures therein belong to a private party on account of leasehold rights granted to such party by the Government. Referring to the same, it was sought to be argued that it, would be permissible to acquire only the structures constructed on the Government land. Though the proposition of law canvassed cannot be disputed, in the facts and circumstances, it is of no help to the petitioners. In the case of Writ Petition No. 1384 of 1997, the proposed acquisition is not of the building in the entirety but it is a proposal of part of the floor of the building, and that too is objected to by the owner thereof. Besides, once the land belongs to Government and the structures have been constructed by the persons having leasehold interest in the land, in case Government desires to occupy such structures, nothing would prevent the Government from exercising contractual rights in relation to such lease created by the Government in favour of such persons as also the rights, if any, under the statutory provisions governing such relationship between the Government and its lessees.

45. No other point is canvassed in the course of hearing of the matter.

46. In the facts and circumstances and for the reasons stated above, the proposed acquisition of the premises, sans the land, in Writ Petition No. 1956 of 1994 and the part of the floor of the building in Writ Petition No. 1384 of 1997, cannot be sustained and needs to be quashed.

47. In the result, both the petitions succeed. The rule is made absolute in terms of prayer Clauses (a) and (b) in both the petitions, with costs.