Collector (District Magistrate) Allahabad and Another

Vs

Raja Ram Jaiswal

And

Raja Ram Jaiswal

Vs

Collector (District Magistrate) Allahabad and Another

Civil Appeal No. 2458 of 1980 and Special Leave Petition No. 9019 of 1980

(D. A. Desai, V. B. Eradi, JJ)

29.04.1985

JUDGMENT

D. A. DESAI, J. -

1. Respondent Raja Ram Jaiswal moved Civil Miscellaneous Writ Petition No. 3174 of 1975 under Article 226 of the Constitution in the High Court of Judicature at Allahabad questioning the validity of the Notification dated February 6, 1975 issued under Section 4(1) of the Land Acquisition Act ('Act' for short) as also a notice dated March 6, 1975 served upon him pursuant to the aforementioned notification. The impugned notification was published in the U.P. Government Gazette dated February 15, 1975. By this impugned notification, land bearing Plot No. 62 approximately admeasuring 8265 sq. yds. was sought to be acquired as being needed for a public purpose namely for a public purpose namely for extension of Hindi Sangrahalaya of the Hindi Sahitya Sammelan, Prayag. A substance of this notification was published in the locality where the land sought to be acquired is situate. On March 22, 1975, a corrigendum dated March 13, 1975 was published by which the impugned notification dated February 15, 1975 was to stand corrected by reading Plot No. 26 instead of 62 and the area sought to be acquired to be read as 2865 sq. yds. instead of 8265 sq. yds. After the publication of the corrigendum the petitioner sought amendment of the petition which was granted. Validity of the amended notification was challenged on diverse grounds. However, at the hearing of the petition, the challenge was confined to the following four grounds as summarised in the judgment of the High Court. They may be extracted :

> 1. Notification dated February 6, 1975 issued under Section 4 of the Land Acquisition Act is invalid inasmuch as it had been issued without first complying with the provisions of Rule 4 of the Land Acquisition (Companies) Rules, 1963.
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> 2. Acquisition proceedings are mala fide.
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> 3. Notice under Section 4(1) of the Act was served upon the petitioner on March 6, 1975 when only two days time was left for filing objections under Section 5-A of the

Land Acquisition Act. This rendered the proceedings illegal.

4. The notification under Section 4(1) did not relate to Plot No. 26 belonging to the petitioner. Proceedings to acquire the said plot are therefore without jurisdiction.

After the petition was amended two additional grounds of challenge were pressed on behalf of the respondent. They are :

1. The notification dated March 13, 1975 is invalid for the very same reason for which the notification dated February 6, 1975 is claimed to be invalid.

2. The Land Acquisition proceedings are invalid inasmuch as the notification dated March 13, 1975 was neither published nor was its substance notified in the locality, as also because no notice thereof had been served upon the petitioner.

Negativing all the challenges except the one that as there was failure to cause public notice if the substance of notification under Section 4(1) to be published at convenient place in the locality on this short ground, the impugned notification was quashed. Hence this appeal by the Collector, Allahabad and the Land Acquisition Officer by special leave.

2. Respondent who was the original petitioner but is the respondent in the appeal field by the Collector will be referred to as the petitioner in this judgment.

3. Petitioner filed Special Leave Petition No. 9019 of 1980 against the same judgment contending that the High Court committed an error in rejecting the challenge to the validity of the impugned notification on the ground of legal mala fides as also on the ground of non-compliance with Rule 4 of the Land Acquisition (Companies) Rules, 1963.

4. As both these matters arise out of the same judgment, they were heard together and are being disposed of by a common judgment. It may be mentioned that connected Civil Appeal No. 2437 of 1981 was to be taken up for hearing after the hearing concluded in the present appeal and therefore, the judgment in this matter was postponed because the observations in one were likely to have some impact on the disposal on merits of the contentions in the cognate appeal. Though very much delayed by circumstances beyond our control, few days back the hearing in the cognate appeal is over and therefore, both the appeals can now be disposed of, though by separate judgments.

5. A brief resume of the facts leading to the writ petition filed in the High Court would be quite instructive in this case. The Hindi Sahitya Sammelan ('Sammelan' for short) for whose benefit the land was sought to be acquired was initially formed as a voluntary organisation in 1910 and on January 8, 1914 it was registered as a society under the Societies Registration Act retaining the same name. Somewhere in 1950 differences arose between the members of the society and the attempt to alter the constitution of the society, ultimately led to litigation. The U.P. Legislature enacted an Act styled as U.P. Hindi Sahitya Sammelan Act No. 36 of 1956 under which a statutory body was created under the name of Hindi Sahitya Sammelan. The statutory body was to take over the management and properties of the society. The Act was however struck down as unconstitutional in Damyanti Naranga v. Union of India ((1971) 3 SCR 840 : (1971) 1 SCC 678). The pre-existing Sammelan which was a registered society continued to function as such. It is for the benefit of the Sammelan that the land involved in the dispute was sought to be acquired. According to the Sammelan, it is in need of land for building 'Sangrahalaya' which was roughly translated as

museum-cum-library-cum-reading room.

6. At the instance of the Sammelan, Allahabad Municipal Board agreed to hand over the land and building in which a municipal school was located situated at Kamta Prasad Kakkar Road adjacent to the Central Office and Press of the Sammelan, on certain conditions. The Sammelan needed the land, as it was then declared, to establish a museum. The land with the school building thereon was transferred to the Sammelan in 1953. It may be mentioned that even till today the area of land admeasuring 7315 sq. yds. in possession of the Sammelan is lying vacant and for the quarter of a century, museum has not come up. This aspect is mentioned in some detail as it has an impact on the contention canvassed in these appeals.

7. Petitioner Jaiswal along with the members of his family purchased land bearing Plot No. 26 with a building thereon admeasuring 2978 sq. yds. situated at K. P. Kakkar Road in March 1970. The petitioner wanted to build a sound-proof air-conditioned cinema theatre on the Plot No. 26 purchased by him. The plan for the proposed theatre was sanctioned both by the District Magistrate and the local municipality in December 1970. It may be recalled here that the judgment of this Court holding Hindi Sahitya Sammelan Act unconstitutional was rendered on February 23, 1971. The Sammelan was wholly opposed to the construction of a theatre near its campus as in its view a theatre and a research-cum-study centre can go ill together. Therefore, when the petitioner applied for a certificate of approval under Rule 3 read with Rule 7(2) of the U.P. Cinematograph Rules, 1951 for construction of a cinema theatre, authorities of the Sammelan raised a storm of protest, sometimes peaceful occasionally likely to turn violent impelling authorities to impose restrictive orders under Section 144, Code of Criminal Procedure. Sammelan also submitted a long memorandum setting out its objections with a view to persuading the authorities not to grant a certificate of approval for construction of a cinema building. Overruling the objections the District Magistrate, the Licensing Authority under the U.P. Cinemas (Regulation) Act, 1955 granted the requisite certificate of approval under Rule 3 which would in imply that having regard to the provisions of the 1955 Act and 1951 Rules, there was no legal impediment to constructing a cinema theatre on Plot No. 26. Thereupon, Secretary of the Sammelan addressed a letter to the Chief Minister of State of U.P. complaining against the grant of the permission by the District Magistrate and requesting the Chief Minister to cancel the permission. Ultimately, having failed to thwart the grant of certificate of approval, the Sammelan wrote a letter on October 13, 1971 for acquiring land bearing Plot No. 26. It may be recalled that the certificate of approval for constructing a cinema building was granted by the District Magistrate on March 24, 1972. The Sammelan addressed various letters to various authorities including the then Prime Minister of India requesting them to cancel the certificate of approval granted to the petitioner. Ultimately on January 31, 1974, a notification under Section 4(1) of the Land Acquisition Act, 1894 was issued stating therein that 'the land bearing Plot No. 26 admeasuring approximately 2865 sq. yds. was needed for a public purpose namely for extension of Hindi Sangrahalaya of Hindi Sahitya Sammelan, Prayag'. This notification was published in the U.P. Government Gazette on February 9, 1974. A notice under Section 4(1) bearing the same date was served upon the petitioner as also the same was published in the locality. The petitioner challenged the validity of this notification on diverse grounds in Writ Petition No. 1932 of 1974 and as a measure of interim relief, the High Court stayed further proceeding that may be taken to acquire the land. In the meantime by notification dated February 6, 1975, the earlier notification under Section 4(1) dated January 31, 1974 was canceled and a fresh notification was issued to acquire 'land bearing Plot No. 62 admeasuring 8265 sq. yds. for the earlier mentioned public purpose'. Consequently the writ petition in which the validity of the earlier notification was questioned was disposed of as infructuous. The second notification dated February 6, 1975 was published in the U.P. Gazette on February 15, 1975. A notice dated March 6, 1975 under Section 5-

A of the Land Acquisition Act was served upon the petitioner inviting him to file his objection, if there be any, against the proposed acquisition. The petitioner filed detailed objections on March 8, 1975 inter alia contending that the acquisition is for a company and the pre-requisite for acquisition for a company having not been carried out, the acquisition is bad in law. It was also contended that the petitioner is not the owner of Plot No. 62 admeasuring 8265 sq. yds. Promptly on March 13, 1975, a corrigendum was issued and published in the Gazette on March 22, 1975 correcting the notification dated February 6, 1975 to read that instead of Plot No. 62, Plot No. 26 be read and instead of area 8265 sq. yds., be read. In between the issue of the notification and the corrigendum, the petitioner filed Writ Petition 3174 of 1975 questioning the validity of the notification dated February 6, 1975. The High Court struck down the notification as invalid and during the pendency of the writ petition in the High Court, further continuance of the acquisition proceedings were stayed.

8. If the petitioner questioned the validity of the notification on ground of mala fides, he ought to have joined Sammelan as respondent. Having failed to implead a proper party, he behaved curiously in opposing the application of the Sammelan for being impleaded as a party. The High Court was in error in rejecting the application. Therefore, when the Sammelan moved an application for intervention under Order XX Rule 3 of the Supreme Court Rules, 1966, we granted the same and Mr. S. N. Kakkar, learned counsel appeared for the Sammelan at the hearing of these appeals and addressed his oral arguments and submitted written submissions.

9. The High Court struck down the notification holding that 'in order to be a valid notification under Section 4(1), it has to be published or notified for general information in the Official Gazette and for purposes of Section 5-A of the Act, it would be taken to have been published on the date of such publication in the Official Gazette, and the second part of Section 4(1) requires the publication of the substance of the notification in the locality'. This having not been complied with, the notification was bad and invalid. The correctness of this view is questioned on behalf of the appellants.

10. After scrutinising the evidence placed on record, the High Court has recorded a finding that the substances of the notification was not published in the locality either after February 15, 1975 when the notification dated February 6, 1975 was first published in the Official Gazette or after March 22, 1975 when the corrigendum was published in the Official Gazette and thus the requirement of the second part of Section 4(1) has not been complied with. The finding that there was no such publication as herein indicated was not seriously questioned and in fact could not be questioned. A few facts will affirmatively establish it. The first notification dated January 31, 1974 was published in the Official Gazette dated February 9, 1974 and in respect of which a notice was published in the locality in March, 1974. A copy of the notice was served on the petitioner on March 6, 1974. This notification bore the number 78-VIII-LAQ and it was in respect of Plot No. 26 admeasuring 2865 sq. yds. This notification was canceled and superseded by another notification No. 552-VIII-LAQ dated February 6, 1975 which was published in the Official Gazette dated February 15, 1975. This latter notification clearly recites that the earlier notification dated February 9, 1974 is thereby canceled. In the latter notification dated February 6, 1975, the land proposed to be acquired was shown to be Plot No. 62 admeasuring 8265 sq. yds. Admittedly notice of the substance of this notification was not published in the locality. The petitioner had nothing to do with land bearing Plot No. 62 admeasuring 8265 sq. yds. As the previous notification was cancelled, he had nothing to worry about the second notification which has no relevance to the plot belonging to him. The corrigendum dated March 13, 1975 was issued and published in the Official Gazette dated March 22, 1975 correcting the plot number and the area and the corrected entry was to be in reference to Plot No. 26 and area to be acquired was to be 2865 sq. yds. Admittedly, there was no notice of

publication of the substance of the notification dated February 15, 1975 nor of the corrigendum dated March 22, 1975 in the locality. The High Court was therefore, right in holding that in respect of the later notification and corrigendum, no notice was published in the locality and latter part of Section 4(1) was not complied with.

11. Section 4(1) in its application to the State of U.P. reads as under :

> 4(1) Whenever it appears to the appropriate Government or Collector that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.
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> By Land Acquisition (U.P. Amendment and Validation) Act VIII of 1974, the section was amended to read as under :
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> 4(1) Whenever it appears to the appropriate Government or Collector that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and except in the case of any land to which by virtue of a direction of the State Government under sub-section (4) of Section 17, the provisions of Section 5-A shall not apply, the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Through this amendment of 1974 is subsequent to the impugned notification, yet some reference was made to it to buttress the submission that the only purpose of a notification under Section 4(1) and the public notice in the locality is to make functionally effective the provisions of Section 5-A so that the persons interested in the land sought to be acquired can canvass his objections against the proposed acquisition. We shall presently deal with it.

12. Mr. S. N. Kacker for the intervener and Mr. Dikshit for the State of U.P. urged that ordinarily courts do not interfere at the stage of Section 4 notification because it merely constitutes a proposal which will be meticulously examined after the objections are filed under Section 5-A by the person interested in the land wherein all aspects of the matter can be threadbare gone into and examined. Broadly stated, one cannot take serious exception to this submission. However, as a notification under Section 4(1) initiates the proceedings for acquisition of land and uses the expression 'shall' the mandate of the legislature becomes clear and therefore, the infirmities therein cannot be wholly overlooked on the specious plea that the courts do not interdict at the stage of a mere proposal.

13. A bare perusal of Section 4(1) clearly shows that in order to comply with the statutory requirements therein set out, a notification stating therein 'the land which is needed or is likely to be needed for a public purpose' has to be published in the Official Gazette. The second part of the sub-section provides that 'the Collector has to cause public notice of the substance of such notification to be given at convenient places in the locality in which the land proposed to be acquired is situated. Both the conditions are held by a catena of decisions to be mandatory. Whether the second condition is mandatory or directory is no more res integra. In Khub Chand v. State of Rajasthan ((1967) 1 SCR 120, 125 : AIR 1967 SC 1074), Subba Rao, C.J. speaking for the court observed that

> the statutory intention is, therefore, clear, namely, that the giving of public notice is mandatory. If

so, the notification issued under Section 4 without complying with the said mandatory direction would be void and land acquisition proceedings taken pursuant thereto would be equally void.

While reaching this conclusion, the Court distinguished the decision in Babu Barkya Thakur v. State of Bombay ((1961) 1 SCR 128 : AIR 1960 SC 1203 : (1961) 2 SCJ 392) wherein it was held that

any defect in the notification under Section 4 is not fatal to the validity of the proceedings, particularly when the acquisition is for a company and the purposes has to be investigated under Section 5-A or Section 40 necessarily after the issues of the notification under Section 4 of the Act.

The Court piointed out that the defect with which the notification in Babu Barkya Thakur case ((1963) 1 SCR 128 : AIR 1960 SC 1203 : (1961) 2 SCJ 392) suffered was of a formal nature and did not go to the root of the matter. However the decision is not an authority for the proposition that if a public notice of the notification was not given as prescribed by Section 4, it can be ignored. The pertinent observation of the court is such an approach would constitute re-writing the section. The court also referred to Somavanti v. State of Punjab ((1963) 2 SCR 774 : AIR 1963 SC 151 : (1963) 33 Com Cas 745) and quoted with approval the statement therein made that a valid notification under sub-section (1) of Section 4 is a condition precedent to the making of a declaration under subsection (1) of Section 6. This view has been consistently followed and was approved in State of Mysore v. Abdul Razak Sahib ((1973) 1 SCR 856 : (1973) 3 SCC 196), wherein it was observed that "in the case of a notification under Section 4 of the Land Acquisition Act, the law has prescribed that in addition to the publication of the notification in the Official Gazette, the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both theses conditions are satisfied, Section 4 of the Lands Acquisition Act cannot be said to haves been complied with. The publication of a notice in the locality is a mandatory requirement." Mr. Kacker however, drew our attention to a few more observations in the judgment wherein it was said that there is an important purpose behind publication of the substance of the notification in the locality because in the absence of such publication, the interested persons may not be able to file their objections challenging the proposed acquisition and they will be denied an opportunity afforded by Section 5-A which confers a very Valuable right. Relying on this observation Mr. Kacker urged that if the underlying purpose behind publication of a notice in the locality is to give an opportunity to the person interested in the land to object to the acquisition, where in a case the purpose is achieved as in this case the petitioner having filed his objections, the failure to publish the substance of the notification in the locality need not be treated fatal and cannot invalidate the proceedings. The submission as presented is very persuasive and but for binding precedents, we would have accorded considerable attention to it. But we would not whittle down a mandate of legislation recognised by a long line of decisions solely depending upon the facts of a given case. Further the submission is predicated upon an assumption that the sole purpose behind publication of substance of notification in locality is to make requirements of Section 5-A functionally effective. The assumption as would be pointed out is not well founded. In fact, the court in the last mentioned case went so far as approving the decision of the Mysore High Court in Gangadharaih v. State of Mysore ((1961 Mys LJ 883) wherein it was ruled that 'when a notification under Section 4(1) is published in the Official Gazette and it, is accompanied by or immediately followed by the public notice, that a person interested in the property proposed to be acquired can be regarded to have had notice of the purposed acquisition'. This is a mandatory requirement for legal compliance with the requirements of Section 4(1). In Narendra Bahadur Singh v. State of U. P. ((1977) 2 SCR : (1977) 1 SCC 216) this Court reiterated that a publication of the notice in the locality as required by the second part of Section 4(1). is mandatory and unless that notice is given in accordance with the provisions contained therein, the entire acquisition proceedings are vitiated. Repelling the contention, that the

only purpose behind publication of a notice in the locality is to give opportunity to the person interested in the land to prefer objections under Section 5-A which confers a valuable right, it was held that even though in the facts of that case, the enquiry under Section 5-A was dispensed with by a direction under Section 17(4) of the Act, the failure to comply with the second condition in Section 4(1) is fatal. It was pertinently observed that provisions of Section 4(1) cannot be held to be mandatory in one situation and directory in another and therefore, it cannot be said that the only purpose behind making the publication of notice in the locality mandatory is to give an opportunity to the person interested in the land to file objections under Section 5-A. Of course, what other object it seeks to subserve has been left unsaid. But the answer is not for us to seek. At least we have no doubt that the only visible and demontrable purpose behind publication of the substance of the notification under Section 4(1) in the locality where the lands proposed to be acquired is situated, is to gives the persons interested in the lands due opportunity to submit their considered objections against the proposed notification.

14. Incidentally, it may be pointed out that after the 1974 amendment, Section 4(1) on its true interpretation may unmistakably indicates that where the enquiry under Section 5-A is not dispensed with by resorting to Section 17(4), compliance with the seconds part of Section 4 would be mandatory. We however do not propose to go into this aspect because the amendment is subsequent to the notification.

15. Mr. Kacker however on behalf of the intervener while conceding that there cannot be a valid acquisition unless a notification is published in the Official Gazette and a substance of the notification is published in the locality, urged that publication in locality need not necessarily follow the publication of the notification in the Official Gazette but it may even precede the same because what is of importance is the decision to acquire, the notification and publication of the notice are mere formal expressions of the decision of the Government to start acquisition proceedings. Proceeding along it was said that the second requirement of Section 4(1) viz. publication of the notice in the locality is only to make effective the provisions of Section 5-A and that such minor defect cannot invalidate notification under Section 4. To substantiate this submission, reliance was placed upon the decisions in Babu Barkya Thakur case ((1961) 1 SCR 128 : AIR 1960 SC 1203 : (1961) 2 SCJ 392), State of M. P. v. Vishnu Prasad Sharma ((1966) 3 SCR 557 : AIR 1966 SC 1593) and Narendra Bahadur Singh case ((1977) 2 SCR 226 : (1977) 1 SCC 216). All these decisions do not bear out or substantiate the submission of Mr. Kacker for the reasons already mentioned.

16. Assuming that a notification in the Official Gazette is a formal expression of the decision of the Government, the decision of the Government is hardly relevant, unless it takes the concrete shape and form by publication in the Official Gazette. Where a decision of the Government to be effective and valid has to be notified in the Government Gazette, the decision itself does not become effective unless a notification in the Official Gazette follows. In Mahendra Lal Jaini v. State of U. P. (1963 Supp 1 SCR 912 : AIR 1963 SC 1019) it was held that a notification under Section 4-A or the Indian Forest Act, 1927 is required to be published in the Gazette and unless it is so published, it is of no effect. Logically, the same view must be adopted for a notification under Section 4. Therefore assuming that a notification is a formal expression of a decision of the Government to acquire land, unless the decision is notified in the Government Gazette by an appropriate notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision. Section 4(1) further requires that 'the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality'. The expression 'such notification' in the latter part of Section 4(1) and sequence of events therein enumerated would

clearly spell out that first the Government should reach a decision to acquire land, then publish a notification under Section 4(1) and simultaneously or within a reasonable time from the date of the publication of the notification cause a notice to be published containing substance of such notification meaning thereby that notification which is published. Obviously, therefore, there cannot be a publication in the locality prior to the issuance of the notification. The submission of Mr. Kacker does not commend to us.

17. In this context, it was next contended that at any rate the petitioner has not suffered any prejudice by the failure of the Government to publish a notice in the locality because the petitioner has filed detailed objections against the proposed acquisition. If the only purpose behind publishing the notice in the locality was to give an opportunity to the persons interested in the land to file their objections, the submission would have merited consideration, but the same has been expressly negatived and therefore, it is futile to examine the same. To be brutally frank if this was the only ground for invalidating the notification, in the backdrop of facts we would have our serious reservations in upholding the decision, though as the law stands, the High Court was perfectly justified in reaching this conclusion. Our reservations have nothing to do with the perfectly legal view taken by the High Court. They stem from the facts of this case and our understanding of the purpose behind publication of notice as set out by us earlier. In such a situation, we would have developed the concept of prejudice and the absence of it resulting in negativing the contention. But there are other formidable challenges to the validity of the impugned notification, which of course have not found favour with the High Court but we are inclined to take a different view of the matter. Therefore we let the decision of the High Court on this point stand.

18. Turning to the petition for special leave filed by the petitioner, we grant special leave to appeal and proceed to examine the two challenges to the validity of the notification under Section 4(1) which have been negatived by the High Court. The petitioner questioned the validity of the notification inter alia on the ground that the acquisition was mala fide and that the acquisition being for a Company, it would be invalid for failure to comply with the provisions of Rule 4 of the Land Acquisition (Companies) Rules, 1963. The High Court negatived both the challenges. Mr. Nariman, learned counsel for the petitioner invited us to examine them.

19. The relevant averments of the question of mala fides as set out in the writ petition filed in the High Court may be briefly summarised. As the objections by the Sammelan for not granting a certificate of approval for construction a cinema building on Plot No. 26 were not accepted by the licensing authority and a certificate of approval was subsequently granted to the petitioner, the Sammelan in order to achieve the same object, namely, not to permit a theatre to be constructed at the place, moved the authorities for acquiring the land. It is averred that the genesis of the proceeding for acquisition is not in the need of the Sammelan but its failure to stop the cinema theatre coming up and thus the purported need is non-existent and the initiation of the acquisition proceedings was mala fide. Its sole purpose is to deprive the petitioner of the cinema business which he would legally carry on. Frankly, the averments are not very specific, clear, precise and to the point. But the cumulative effect of the allegations is that Sammelan being actuated by the ulterior motive to thwart the petitioners' project to construct a cinema building resorted to the dubious method of seeking acquisition of the land even though it had no need present or in near future of the land in question. Obviously, if such be the allegation, the Sammelan ought to have been impleaded as a party to the writ petition. Not only the Sammelan was not impleaded as the party, but when the Sammelan moved an application for intervention or for being joined as a party, the petitioner was ill-advised to object to the same and unfortunately the objection prevailed with the High Court. We are unable to appreciate both the objections and the view taken by the High Court. Therefore, when

Mr. Nariman pressed his petition for special leave to appeal against the rejection of the challenge on the aforementioned two grounds, we made it abundantly clear that we would be least interested in examining the challenge founded on the ground of mala fides in the absence of the Sammelan. The Sammelan had moved a petition for intervention which, it must be stated in fairness to Mr. Nariman, was not objected in this Court and we made it abundantly clear that the request for being impleaded as a party in the High court ought not to have been objected. Accordingly, the petition for intervention was granted and the Sammelan was given an opportunity to file its affidavit as well as any material that it chooses to place on record. According to the rules, the intervener are not entitled to address oral submissions to the court but in the background of the facts of this case, we gave full opportunity to Mr. Kacker to address oral submissions. It is in the backdrop of these facts that we propose to examine the challenge founded on the ground of mala fides.

20. A few facts will have to be recapitulated. After the petitioner purchased the Plot No. 26 and submitted an application of July 6, 1971 to the licensing authority for grant of a certificate of approval as envisaged by Rule 3 read with Rule 7 of U.P. Cinematograph' Rules, 1951 ('1951 Rules' for short) for constructing a cinema building on Plot No. 26, the Sammelan promptly objected to the grant of certificate of approval on the ground that existence of a cinema theatre within the vicinity of the campus of the institute of culture, learning and research like the Sammelan would be destructive of the environment and the atmosphere of the institute, and existence of a cinema theatre at such a place would be an incongruity. May be, it might be the honest and genuine belief of the office-bearers of the Sammelan that an institute of learning and research cannot coexist with a cinema theatre in its vicinity, and that the latter may pollute the educational and cultural environment. The District Magistrates as the licensing authority after corresponding with the State authorities granted the certificate of approval on February 24, 1974. On October 13, 1971, the Sammelan sent a communication addressed to the Chief Minister of U.P. in which it was stated that a cinema building should not be permitted to be constructed in the vicinity of the campus of the Sammelan. The letter also refers to an earlier application addressed to the Chief Minister requesting him to intervene so that the proposed cinema houses may not be permitted to be constructed near the campus of the Sammelan, because it is likely to cause nuisance and interfere with the activities and the academic environment of the Sammelan, Further request was made in the letter that administrative sanction may be granted for acquisition of land on which the cinema building is proposed to be constructed offering that the Sammelan is ready to pay whatever compensation that may have to be paid for acquisition of the land and the building thereon. The District Magistrate by his letter dated November 8, 1971 addressed to the Pradhan Mantri of the Sammelan pointed out that the Revenue Board had directed that no institution should be given land more than that required for its purpose and that where the land is to be acquired by a body, such a body itself must make an attempt to directly purchase the land. Then comes a sentence which may be extracted :

> It is also evident by your above referred letter that you stood in need of acquiring land because the owner of the land wants to contract a cinema houses over it and the institution does not want that a cinema should be constructed over the same.

It is clear by the above circumstances that the land is not so much required by the institution as for the construction of the cinema house. Therefore, I would request you to consider the matter and if your aim is that the cinema house is not constructed you may resort to other means.

In the mean time on December 16, 1971, Joint Secretary to the Government of U.P. wrote to the District Magistrate enquiring as to "whether in granting the certificate of approval, Rule 7(2) of the 1951 Rules was Violated; what is the sphere of the activities of the Sammelan; does it undertake

teaching or other such activities by virtue of which it may be placed in the category of educational institutions; if for some other reasons, construction of cinema house on proposed site is against public interest, seek Government's approval in this respect specifying the reasons thereon; obtain written objections from the Sammelan; if required, take Government's approval making recommendations; and intimate whether cinema building will be sound-proof". On March 24, 1972, the District Magistrate as the licensing authority sent a detailed reply inter alia stating that the Sammelan is not an educational institution nor a residential institution and it has no regular program of class teaching and it cannot be styled as an educational institution within the meaning of the expression in Rule 7. He also opined that having regard to all relevant factors and other circumstances construction of a cinema building on the proposed site is not against the public interest. He also opined that the approved plans of the building show an air-conditioned sound-proof cinema theatre which would enhance the beautification of the locality and would enrich the coffers of the State. It was lastly pointed out that the distance between the proposed cinema building and the campus of the Sammelan was about 95 feet as crow-fly measure. He concluded by saying that having regards to all the circumstances, he was of the opinion that public interest in no way would be damaged if the permission is granted for construction of the cinema house in question on the proposed site, and that he was proceeding to grant permission to the applicant which is being forwarded to the Government. After the receipt of the permission, the old existing building on Plot No. 26 was demolished by the petitioner and construction of a modern cinema theatre fully air-conditioned and sounds-proof was commended. On August 7, 1983, the Sammelan moved a formal application requesting for initiating acquisition proceedings of land included in Plot No. 26 as it was needed by the Sammelan for the purpose of extension of Hindi Sangrahalaya (Museum). Skipping over some of the intermediate steps including a request to the then Prime Minister to intervene and thwart the cinema project, when the first notification under Section 4(1) was published, the purpose for which the lands was to be acquired was shown to be "extension of Hindi Sangrahalaya at Hindi Sahitya Sammelan, Prayag".

21. Way back on July 22, 1949, the Sammelan with a view to establishing a museum in connection with a Hindi University approached the Allahabad Municipal Board to transfers a middle school building along with the gymnasium attached to it. The Municipal Board unanimously sanctioned the proposal to hand over the building of the school with appurtenant lands situated at Kamta Prasad Kakkar Roads (that is the road on which the irritating cinema theatre has come up) to the Sammelan subject to the condition that the Sammelan would construct a school building at South Malaka at a cost of Rs. 30,000. The Sammelan accepted the condition and complied with it. The Government accorded sanction to the proposal on September 9, 1953 and since then the school building with the land over which it is standing and the gymnasium were transferred to the Sammelan. It is an admitted position that an area of 7315 sq. yds. of lands in the Sammelan campus is lying vacant, open and unutilised till today, that is for thirty-two years. This will have a direct impact on the alleged need of the Sammelan of the lands proposed to be acquired. At the time of taking over the school building, the Sammelan had contemplated putting up a museum. That again is the purpose for which the lands involved in this appeal is sought to be acquired at the instance of the Sammelan. When this rather disturbing position emerged on analysis and evaluation of uncontroverted facts, it was suggested that the Sammelan wanted to construct a building for Natyashala and Rangmanch for which plans have not been prepared. All these inconvenient facts found reflection in the order sheet of the Collector dated September 3, 1973 in which it is stated that "since the authorities of the Sammelan have capacity to approach the highest authority of the democratic Government as is evident from the letters received from their office, the office is not capable to offer any comments whatever might be the proposal whether it is according to the rules or against the rules or the same

should be allowed to remain as it is etc." Later on the Sammelan stated that after the land is acquired, it would be utilized for implementation of some new schemes. Thus though the Sammelan indisputably had and has open land in its possession from 1953 till 1973, it did not construct the museum for which it had obtained land from the Allahabad Municipal Board. That apart it again moved the Government for acquiring the land of the petitioner under the pretext that it is needed for construction a museum. When the facts contra-indicated the purported need, it came out with a suggestion that it proposed to construct Natyashala and Rangmanch. One may in passing, a bit humourously note that Natyashala is a place where dramatic performances are staged and Rangmanch is a place where dances are performed. The Sammelan would put up with them. That would show that such performances would not be destructive of educational and cultural environment of the campus of the Sammelan but a modern air-conditioned sound-proof cinema building would. We leave this without comment. But as these proposals failed to carry conviction, its latest stand is that let the land come, they would devise schemes for its proper utilisation as and when the land is made available. This demonstrates the hollowness of the alleged need and removes the veil thereby disclosing the real purpose for acquiring the land.

22. Mr. Kacker urged that quitting the quibbling so far resorted to, the Court may examine a forthright submission that the Sammelan's interest in getting the land acquired is not merely to construct Sangrahalaya but it is equally if not more interested in not having a cinema theatre at the place where it is being constructed. Shorn of embellishment, the Sammelan would not tolerate the theatre and therefore when it failed to thwart the grant of certificate of approval and cinema theatre came up, it talk the second step to achieve the first mentioned object viz. seek acquisition of land to satisfy an imaginary or non-existent need. The challenge on the ground of legal mala fides to the validity of the notification under Section 4(1), a preliminary step in the process of acquisition has to be examined, evaluated and answered in the backdrop of these facts.

23. It can be stated without fear of contradiction that need of the land for Sangrahalaya is a figment of imagination conjured up to provide an ostensible purpose for acquisition. There is enough land roughly admeasuring 7315 sq. yds. lying vacant and unutilised with the Sammelan for over a quarter of a century. The Sangrahalaya has not come up though this was the land which was taken from the Municipal Board for the avowed object of putting up a Sangrahalaya. The Sammelan moved on to Rangmanch and Natyashala and then ultimately adopted a position that when the land is made available, schemes will be devised for its proper use. Could it be said with confidence that the Sammelan was ever interested in acquiring the land for effectuating any of its objects. It has neither the plans nor the wherewithals nor any specific object for which it needs land and it is unable to use over years the land already available at its disposal. Therefore, Mr. Kacker took bold and to some extent an imaginative stand. He said that in seeking acquisition of the land, the Sammelan is actuated by a desire not to have the cinema theatre in its vicinity or if is has come into existence, to do away with the same. When these facts stare into the face, can it be said with confidence that the Government or the Collector in whom the power to acquire land is vested, exercised the power for the purpose for which it is vested or are they guilty of legal mala fides.

24. The High Court disposed of the contention by an oversimplification of this tangled web of facts without making the least attempt at unearthing the real motives of the Sammelan. The tell-tale facts disclose motives and unravel hidden objects. The High Court bypassed them by simply observing that there is nothing on record to indicate that the Collector or the State Government are inclined to act against the petitioner for any improper motives. The High Court unfortunately missed the real contention of legal mala fides, as also an important piece of evidence that the Collector on whom the statute confers power to initiate proceeding for acquisition himself was satisfied that Sammelan

sought acquisition not because it requires the land but it wants to stop or do away with the cinema theatre. This becomes evident from the letter of the District Magistrate dated November 8, 1971.

25. It is well-settled that where power is conferred to achieve a certain purpose, the power can be exercised only for achieving that purpose. Section 4(1) confers power on the Government and the Collector to acquire land needed for a public purpose. The power to acquire land is to be exercised for carrying out a public purpose. If the authorities of the Sammelan cannot tolerate the existence of a cinema theatre in its vicinity, can it be said that such a purpose would be a public purpose ? May be the authority of the Sammelan may honestly believe that the existence of a cinema theatre may have the pernicious tendency to vitiate the educational and cultural environment of the institution and therefore, it would like to wish away a cinema theatre in its vicinity. That hardly constitutes public purpose. We have already said about its proclaimed need of land for putting up Sangrahalaya. It is an easy escape route whenever Sammelan wants to take over some piece of land. Therefore, it can be fairly concluded that the Sammelan was actuated by extraneous and irrelevant considerations in seeking acquisition of the land and the statutory authority having known this fact yet proceeded to exercise statutory power and initiated the process of acquisition. Does this constitute legal mala fides ?

26. Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context 'in good faith' means 'for legitimate reasons'. Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated. If the power to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides. In such a situation there is no question of any personal ill-will or motive. In Municipal Council of Sydney v. Campbell (1925 AC 338, 375) it was observed that irrelevant considerations on which power to acquire land is exercised, would vitiate compulsory purchase orders or scheme depending on them. In State of Punjab v. Gurdial Singh ((1980) 1 SCR 1071 : (1980) 2 SCC 471) acquisition of land for constructing a grain market was challenged on the ground of legal mala fides. Upholding the challenge this Court speaking through Krishna Iyer, J. explained the concept of legal mala fides in his hitherto inimitable language, diction and style and observed as under : (SCC p. 475, para 9)

Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated : "I repeat ... that all power is a trust - that we are accountable for its exercise - that, from the people, and for the people, all springs, and all must exist".

After analysing the factual matrix, it was concluded that the land was not needed for a Mandi which was the ostensible purpose for which the land was sought to be acquired but in truth and reality, the Mandi need was hijacked to reach the private destination of depriving an enemy of his land through

back-seat driving of the statutory engine. The notification was declared invalid on the ground that it suffers from legal mala fides. The case before us is much stronger, far more disturbing and unparalleled in influencing official decision by sheet weight of personal clout. The District Magistrate was chagrined to swallow the bitter pill that he was forced to acquire land even though he was personally convinced there was no need but a pretence. Therefore, disagreeing with the High Court, we are of the opinion that the power to acquire land was exercised for an extraneous and irrelevant purpose and it was colourable exercise of power, namely, to satisfy the chagrin and anguish of the Sammelan at the coming up of a cinema theatre in the vicinity of its campus, which it vowed to destroy. Therefore, the impugned notification has to be declared illegal and invalid for this additional ground.

27. The validity of the impugned notification was also challenged on the ground that even though the acquisition is for the Sammelan, a company, the notification was issued without first complying with the provisions of Rule 4 of the Lands Acquisition (Companies) Rules, 1963. The High Court has negatived this challenge. We must frankly confess that the contention canvassed by Mr. Nariman in this behalf would necessitate an indepth examination of the contention However, we consider it unnecessary in this case to undertake this exercise because the judgment of the High Court is being upheld for the additional reason that the acquisition in this case was mala fide. Therefore, we do not propose to examine the contention under this head.

28. For the reasons which appealed to the High Court and for the additional reasons herein stated, the appeal preferred by the Collector and the District Magistrate and another fails and is dismissed whiles the appeal on the grant of special leave to the petitioner is hereby partly allowed to the extent herein indicated. Substantially, the Civil Appeal No. 2458 of 1975 fails and is dismissed with no orders as to costs.

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