SUPREME COURT OF INDIA

Devinder Singh

Vs.

State of Punjab

C.A.No.4843 of 2007

(S.B. Sinha and Harjit Singh Bedi JJ.)

12.10.2007

JUDGMENT

S.B. SINHA, J :

1. Leave granted in both the Special Leave Petitions.

2. Appellants herein are owners of various tracts of agricultural lands situate in Village Chak Gujran, Tehsil and District Hoshiarpur in the State of Punjab. Respondent No. 5, M/s International Tractors Limited, is a Company incorporated under the Companies Act, 1956. It intended to set up a project named Ganesha Project. It requested the State to acquire lands in question in terms of the provisions of the Land Acquisition Act, 1894 (for short, the Act). A notification was issued by the State purported to be under Section 4 of the Act on 15.02.2002, stating :

Whereas it appears to the Governor of Punjab that Land is likely to be required to be taken by the Government at the public expense, for a public purpose namely for setting up of Ganesha Project, M/s. International Tractors Ltd. at Village Chak Gujran, Tehsil & Distt. Hoshiarpur, it is hereby notified that the land in locality described below is likely to be required for the above purpose.

This notification is made under the provisions of Section 4 of the Land Acquisition Act, 1894 to all whom it may concern.

In exercise of powers conferred by the aforesaid section, the Governor of Punjab is pleased to authorize the officers for the time being engaged in undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

Any person interest who has any objection to the acquisition of any land in the locality may within thirty days of the publication of this notification file an objection in writing before the Collector, Land Acquisition Department of Industries & Commerce, Punjab, 17-Bays Building, Chandigarh.

3. Objections having been called for, the appellants herein filed their objections in terms of Section 5A of the Act, inter alia, stating : 5. That the proposed acquisition by the Punjab Government is

unconstitutional, uncalled for and against law and fact of the case, just in order to cause loss to the objectors and to give unlawful gain to other party, i.e., the proposed Ganesha Projectors M/s. International Tractor Ltd.

7. That the acquisition of the proposed land belonging to the objectors is against the interest of the objectors keeping in view the policies of the State. The land in question is cultivable fertile land and the proposed project if any can be shifted some where else at some barren land as well as in the industrial zone according to Industries Master Plan and in this way, it is in the interest of the Pollution Control Department.

9. That the objectors are cultivating the land for the last over 25 years, it is consolidated at one place where in the objector has installed electric motors and planted popular trees around the fields. The objectors do not want that the land in question be acquired since it is against their interest and objectors are dependent on this Acquisition land. The Agriculturist/Farmer is entirely dependent on his land for his livelihood. There are various projects in the name of Escorts Tractors, Mohindra Tractors, Massy Furgon Tractors and so many other tractors companies/industries fulfilling the needs of the public and as such there is no need at all of the proposed industry to be set up in the lands of the objectors.

10. That in any way the proposed acquisition is against the rules of the acquisition and the act itself keeping in view the interest of the objectors thus causing wrongful loss to the objectors and causing wrongful gain to the proposed objectors.

4. Indisputably, a declaration was issued in terms of Section 6 of the Act and an agreement was entered into by and between the Company and the State on 27.02.2003.

5. Writ petitions were filed by the appellants herein questioning the said purported acquisition proceedings praying, inter alia, for the following relief :

(b) Quash the notifications dated 15.02.2002 (Annexure P-2) and 27.02.2003 (Annexure P-5) issued by the respondent No.1 under Sections 4 and 6 of the Land Acquisition Act, 1894, respectively.

6. During the pendency of the said writ petitions, notices in terms of Section 9 of the Act were issued on 31.05.2004. An award was made on 18.02.2005. Allegedly, during the pendency of the said writ petitions, a sum of Rs.100/- was deposited by the State as a token amount for acquisition of the said lands in question.

7. By reason of the impugned judgment, the High Court opined :

(i) The acquisition was for a public purpose in view of the report submitted under the Act, relevant portion whereof is as under : In case of M/s. International Tractors Ltd. the company has entered into an agreement with a Fresh company named M/s. Renault Agriculture France for manufacture of latest technology tractors. M/s. Renault Agriculture France holds 20% equity in the company. Production of these latest technology tractors will boost export, which will contribute to the general

welfare and prosperity of the whole community.

Therefore, in view of the facts and the relevant law as mentioned above, it is proved beyond doubt that the profits have actually gone to the general public.....

(ii) Acquisition of the lands in question was not a colourable exercise of power.

(iii) Acquisition was made in terms of the provisions contained in Part II of the Act and not Part VII thereof, as the State had also contributed a sum of Rs.100/- for the purpose of acquisition of lands. (iv) Execution of the agreement with Respondent No.5-Company and declaration made under Section 6 of the Act although were made on the same day, the same did not suffer from the vice of non-application of mind.

(v) Respondent No. 5 being not a private company, statutory limitations contained in Section 44B of the Act are not attracted. (vi) Rule 4 of the Land Acquisition (Companies) Rules, 1963 (for short, the Companies Rules) being directory in nature, it was not necessary to comply with the provisions thereof.

8. Mr. P.N. Lekhi, learned Senior Counsel appearing on behalf of the appellants, in support of these appeals, would, inter alia, submit :

i) The High Court erred in opining that the lands in question could be compulsorily acquired for a company, other than private company, in accordance with the provisions of Part II of the Act. ii) In view of the insertion of clause (viii) of sub-section (f) in Section 3 by Act No. 3 of 1984, provision of Part II were not available for acquisition of land for companies.

iii) Action on the part of the State in entering into the agreement and issuing a declaration under Section 6 of the Act on the same day was in excess of its power under the Act.

9. Mr. Soli J. Sorabjee, learned Senior Counsel appearing on behalf of Respondent No.5, on the other hand, submitted : i) Acquisition having been made for a public purpose, and a part of the expenses having been made from the public exchequer, provisions of Part VII of the Act were not attracted.

ii) Principles of natural justice as contained in Section 5A of the Act having been complied with, the State was not required to carry out any inquiry as envisaged under Rule 4 of the Companies Rules. iii) Declaration made under Section 6 of the Act in regard to the existence of public purpose being conclusive in nature, the court cannot go beyond the same.

(iv) Rule 4 of the Companies Rules being directory in nature, strict compliance thereof was not necessary.

10. The Act was enacted to amend the law for the acquisition of land for public purposes and for companies. Section 3 of the Act provides for interpretation clauses. Clause (cc) of Section 3 of the Act defined the expression corporation owned or controlled by the State in the following terms :

(cc) the expression corporation owned or controlled by the State means any body corporate established by or under a Central, Provincial or state Act, and includes a Government company as

defined in Section 617 of the Companies Act, 1956 (1 of 1956), a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, being a society established or administered by Government and a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, being a cooperative society in which not less than fifty-one per centum of the paid-up share capital is held by the Central Government, or by any State Government or

Governments, or partly by the Central Government and partly by one or more State Governments.

11. The expression company has been defined under clause (e) of Section 3 of the Act to mean :

(i) a company as defined in section 3 of the Companies Act, 1956 (1 of 1956), other than a Government company referred to in clause (cc);

(ii) a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc);

(iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co- operative society referred to in clause (cc))

The expression Public purpose has been defined in Section 3(f) of the Act to mean :

(f) the expression public purpose includes (i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies.;

12. Indisputably, the Land Acquisition Act is an expropriatory legislation. The State ordinarily can acquire a property in exercise of its power of Eminent Domain subject to existence of public purpose and on payment of reasonable compensation in terms of the provisions of the Act. However, the State has been empowered to acquire land also for companies and for purposes other than public purpose.

13. Companies Act, 1956 provides for different types of company. A Government Company is defined in Section 617 thereof. Respondent No. 5 may be a public limited company, but it is not a Government Company. When it filed an application requesting the State to acquire the lands for its purpose evidently an inquiry was caused to be made.

14. It its counter affidavit, the State has, inter alia, contended that Respondent No. 5 is an existing unit for manufacturing tractors and lands sought to be acquired are adjoining their factory. The State appointed a Sub- Committee of Land Acquisition Committee constituted by the State recommending acquisition of 30 acres of lands. Approval of the State, therefor was sought for. Ganesha Project was not a project of the State but one undertaken by Respondent No. 5. Such a project would come within the purview of clause (aa) of Section 40(1) of the Act.

15. When a request is made by any wing of the State or a Government company for acquisition of land for a public purpose, different procedures are adopted. Where, however, an application is filed for acquisition of land at the instance of a company, the procedures to be adopted therefor are laid down in Part VII of the Act. Although it may not be decisive but the conduct of the State as to how it intended to deal with such a requisition, is a relevant factor. The action of the State provides for an important condition to consider as to whether the purpose wherefor a company requests it for acquisition of land is a public purpose and/or which could be made at public expenses either as a whole or in part, wherefor evidently provisions laid down in Part II shall be resorted to. On the other hand, if the State forms an opinion that the acquisition of land at the instance of the company may not be for public purpose or, therefor the expenses to be incurred therefor either in whole or in part shall not be borne by the State, the procedures laid down in Part VII thereof have to be resorted to. The procedures laid down under Part VII of the Act are exhaustive. Rules have been framed prescribing the mode and manner in which the State vis-`-vis the company should proceed. It provides for previous consent of the Appropriate Government, execution of the agreement, previous inquiry before a consent is accorded, publication of the agreement, restriction on transfer, etc. It also provides for statutory injunction that no land shall be acquired except for the purpose contained in clause (a) of sub-section (1) Section 40 of the Act for a private company which is not a Government company. For the purpose of Section 44B of the Act, no distinction is made between a private company and a public limited company.

16. The Land Acquisition (Companies) Rules, 1963 for acquisition of land for the companies have been framed by the Central Government in exercise of its power under Section 55 of the Act. It is not in dispute that the guidelines provided thereunder are followed by the State Government. Concept of constitution of a Land Acquisition Committee appears only from the Companies Rules; no other provision in respect thereof has been made either under the Act or the rules framed thereunder. A bare perusal of sub- rule (1) of Rule 4 of the said Rules categorically states that the

same shall be applicable where acquisition of land is to be made for the company envisaged under Part VII. The State, as indicated hereinbefore, before this Court has categorically stated that advice rendered by a Sub-Committee of the Land Acquisition Committee had been taken into consideration by it with a view to proceed further in the matter. Rule 4 mandates the appropriate Government to arrive at a satisfaction in regard to the factors enumerated therein. Rule 4 of the Rules reads as under : 4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings (1) Whenever a company makes an application to the Appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely:

(i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition;

(ii) that the company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii) that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the company is in a position to utilise the land expeditiously; and

(vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity, to make any representation in this behalf, hold an inquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall

(i) in any case where the land proposed to be acquired is agricultural land consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;

(ii) determine, having regard to the provisions of Secs. 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the company; and

(iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation For the purpose of this rule good agricultural land means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under sub-rule (2), the Collector shall submit a report to the Appropriate Government and a copy of the same shall be forwarded by the Government to the Committee.

(4) No declaration shall be made by the Appropriate Government under Sec. 6 of the Act unless

(i) the Appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted under Sec. 5-A of the Act; and

(ii) the agreement under Sec. 41 of the Act has been executed by the company.

17. The State is also enjoined with a duty to make an inquiry wherefor an opportunity of hearing to the company is required to be given. When the State intends to proceed with the acquisition of land it must form an opinion that the lands which are going to be acquired are not good agricultural lands. The rules by and large lay down a statutory policy in that behalf and question of ignoring the same by the State does not arise.

18. We would consider the question as to whether Rule 4 aforementioned is mandatory or directory or at what stage an inquiry is required to be made, a little later. But we must record that it is not the case of the State that Rule 4, despite the fact that acquisition is made in terms of Part VII of the Act, can be ignored.

19. The High Court proceeded on the basis that as the State formed an opinion that the purpose for which the provisions of the Act were taken recourse to is a public purpose, the provisions of Part II would apply in the instant case. We are not unmindful of the fact that the definition of public purpose as contained in Section 3(f) of the Act is an inclusive one. Therefore, the said definition need not be kept confined to the matters referred to therein. But with a view to ascertain as to what should be a public purpose, we may notice its dictionary meaning as contained in Blacks Law Dictionary, Fifth Edition which is as under :

Public purpose: In the law of taxation, eminent domain, etc., this is a term of classification to distinguish the objects for which, according to settled usage, the government is to provide, from those which, by the like usage, are left to private interest, inclination, or liberality. The constitutional requirement that the purpose of any tax, police regulation, or particular exertion of the power of eminent domain shall be the convenience, safety, or welfare of the entire community and not the welfare of a specific individual or class of persons.

The term is synonymous with governmental purpose. As employed to denote the objects for which taxes may be levied, it has no relation to the urgency of the public need or to the extent of the public benefit which is to follow; the essential requisite being that a public service or use shall affect the inhabitants as a community, and not merely as individuals. A public purposeor public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business.

20. General meaning of the word public policy has always been held to be an unruly horse by this Court. [See Gherulal Parakh v. Mahadeodas Maiya and Others [See AIR 1959 SC 781].

21. Our attention has been drawn to a recent decision of this Court in Pratibha Nema and Others v. State of M.P. and Others [(2003) 10 SCC 626]. Therein, for establishment of a diamond park, 73.3 hectares of dry land was to be acquired. The proposal emanated from the General Manager of the District Industries Centre. Sanction in principle for acquisition was given by the Government of

Madhya Pradesh; even Section 17 of the Act was taken recourse to. The State contributed a token sum of Rs.100/- towards the cost of acquisition. This Court clearly noticed that where the acquisition is for a company, its cost is to be borne entirely by the company itself, provisions of Part 7 would apply. But we must hasten to add that the Bench did not have any occasion to consider the question as to whether the State is entitled to take recourse to the provisions of both Part II and Part VII of the Act simultaneously. The Bench furthermore proceeded to consider the requirements to hold that a public purpose need not be ascertained only from the point of view of applicability of Part II but also the provisions of Part VII, stating :

22. Thus the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The main and perhaps the deceive distinction lies in the fact whether cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in the private sector could get imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present state of law, that seems to be the real position.

22. We need not go into the nicety of the question, keeping in view the fact that there are binding precedents in that behalf that in a case of acquisition for a public company, public purpose is not to be assumed and the point of distinction between acquisition of lands under Part II and Part VII would be the source of funds to cover the cost of acquisition. This Court in Pratibha Nema (supra) held :

In other words, the second proviso to Section 6(1) is the main dividing ground for the two types of acquisition

23. The undisputed fact is that apart from the inquiry conducted by the Land Acquisition Committee in terms of the provisions of Part VII of the Act, admittedly an agreement had also been entered into on 27.02.2003.

24. The agreement in terms of the provisions referred to above by the Company and the Government, a satisfaction of the Government in that behalf for acquisition of the piece of land described in therein was arrived at on the premise that the said work is likely to be useful for the company.

25. Section 41 of the Act has specifically been mentioned for the purpose of entering into the agreement. The terms and conditions of the agreement envisaged : (i) the company was to pay to the Government of Punjab the amount of compensation; (ii) it was to deposit all the sums demanded by the Collector in anticipation, which may be necessary therefor; (iii) only on payment by the company it was to get possession wherefor also the Government reserved its discretion; (iv) use by the company of the land only for the purpose for which acquisition was made was insisted.; (v) provision in regard to time for completion of the project.

26. The Government reserved the right of resumption of the land, if time schedule prescribed therein is not adhered to; in which event land shall vest in the Government. The opinion of the

Government in that behalf is said to be final.

27. Whether in the aforementioned situation, the provisions of Part II can be said to have been complied with, is the question.

28. Submission of Mr. Sorabjee is that any declaration that the land has been acquired for public purpose is conclusive.

29. We would proceed on the said assumption but it is a well-settled principle of law that where an action taken is without jurisdiction, even an order which is conclusive may be subject to judicial review. Jurisdictional errors, as is well-known, are divided in two broad categories (i) an order passed which is wholly without jurisdiction; and (ii) Although the action is not ultra vires, the jurisdictional error has been committed while exercising jurisdiction. [See John v. Rees and Others (1969) 2 All ER 274].

30. In R.L. Arora v. State of U.P. [(1962) Supp 2 SCR 149], this Court held :

Then it was urged on behalf of the respondents that s. 6(3) makes the purpose noted in the notification under s. 6(1) not justiciable. We have not been able to understand how that provision helps the respondents. All that s. 6(3) says is that the declaration shall be conclusive evidence that the land is needed for a public purpose or for a company. In this case the declaration was that the land was needed for a company and that according to s. 6(3) is conclusive evidence that the land is so needed. Now it is not the case of the appellant that the land was not needed for the Works in the present case, nor does the appellant say that though the land was needed for some other purpose, the notification falsely declares that it was needed for the Works. In the circumstances the conclusiveness envisaged by s. 6(3) is of no assistance to the solving of the problem with which we are concerned in the present case.

31. Mr. Sorabjee has strongly relied upon a decision of this Court in Smt. Somawanti and Others v. The State of Punjab and Others [AIR 1963 SC 151 : 1963 (2) SCR 774].

In Somawanti (supra), this Court opined :

Though we are of the opinion that the courts are not entitled to go behind the declaration of the Government to the effect that a particular purpose for which the land is being acquired is a public purpose we must emphasise that the declaration of the Government must be relatable to a public purpose as distinct from a purely private purpose. If the purpose for which the acquisition is being made is not relatable to a public purpose then a question may well arise whether in making the declaration there has been, on the part of the Government a fraud on the power conferred upon it by the Act. In other words the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of s. 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable, provisions such as s. 6(3) notwithstanding.

[Emphasis supplied]

32. When an order is passed without jurisdiction it amounts to colourable exercise of power.

Formation of opinion must precede application of mind. Such application of mind must be on the materials brought on records. The materials should be such which are required to be collected by the authorities entitled therefor. The authorities must act within the four-corners of the statute. An opinion formed even on the basis of an advice by an authority which is not contemplated under the statute render the decision bad in law. A statutory authority is bound by the procedure laid down in the statute and must act within the four-corners thereof.

33. The effect of contribution of a sum of Rs.100/- by the State purported to be towards the amount of compensation, may not be noticed.

In Somawanti (supra) although this Court while upholding that contribution of sum of Rs.100/- as a part of the cost of acquisition may subserve the requirement of law, proceeded to opined :

We would like to add that the view taken in Senga Naicken's case [I.L.R. 50 Mad. 308 : AIR 1927 Mad. 245] has been followed by the various High Courts of India. On the basis of the correctness of that view the State Governments have been acquiring private properties all over the country by contributing only token amounts towards the cost of acquisition. Titles to many such properties would be unsettled if we were now to take the view that 'partly at public expense' means substantially at public expense. Therefore, on the principle of stare decisis the view taken in Senga Naicken's case [I.L.R. 50 Mad. 308 : AIR 1927 Mad. 245] should not be disturbed. We would, however, guard ourselves against being understood to say that a token contribution by the State towards the cost of acquisition will be sufficient compliance with the law in each and every case. Whether such contribution meets the requirements of the law would depend upon the facts of every case. Indeed the fact that the State's contribution is nominal may well indicate, in particular circumstances that the action of the State was a colourable exercise of power. In our opinion 'part' does not necessarily mean a substantial part and that it will be open to the Court in every case which comes up before it to examine whether the contribution made by the State satisfies the requirement of the law. In this case we are satisfied that it satisfies the requirement of law. What is next to be considered is whether the acquisition was only for a company because the compensation was to come almost entirely out of its coffers and, therefore, it was in reality for a private purpose as opposed to public purpose. In other words, the question is whether there was on the part of the Government a colourable exercise of power. Elaborating the point it is said that the establishment of a factory for manufacturing refrigeration equipment is nothing but an ordinary commercial venture and can by no stretch of imagination fall within the well-accepted meaning of the expression 'public purpose', that even if it were to fall within that expression the factory is to be established not by the Government, nor by Government participation but solely by the respondent No. 6, a public limited concern and that, therefore, the concern could acquire land for such a purpose only after complying with the provisions of Part VII and that the use of the provisions of s. 6(1) is merely a colourable device to enable the respondent No. 6 to do something which, under terms of s. 6(1), could not be done.

[Emphasis supplied]

34. Strong reliance has also been placed by the High Court in Jage Ram and Others v. The State of Haryana and Others [AIR 1971 SC 1033 : (1971) 1 SCC 671] for the proposition that once the Government had contributed any sum towards the cost of the acquisition of land, it was not necessary for the Government to proceed under Part VII of the Act and, therefore, does not lie in the mouth of State that acquisition was under Part II.

35. In this case we may notice that purported contribution had been made only after the writ petitions were filed. Ordinarily, this Court would not have gone into the said question but the agreement provides for payment of entire compensation by the company. We do not know as to at what stage the State thought it fit to meet a part of the expenses for acquisition of land. Such an opinion on the part of the State having regard to the statutory scheme should have been formed prior to entering into the agreement itself. The agreement does not mention about any payment of a part of compensation by the State. We, in absence of any other material on record, must hold that the State had not formed any opinion in that behalf at least when the agreement was executed. The wisdom in all probabilities dawned on the officers of the State at a later stage.

36. Satisfaction on the part of the State required to be arrived at upon formation of opinion on the basis of materials brought on records for the purpose of Part II of the Act are different from that of Part VII. Once the appropriate Government arrives at a decision that the land sought to be acquired is needed for a public purpose, the court would not go behind it, as the same may furnish a valid argument for upholding an acquisition under Part II. But when an acquisition is made under Part VII, the conditions precedents therefor as contained in the Companies Rules must be satisfied. On the face of record, if it can be shown that the Government had ignored the mandatory provisions of the Act, the acquisition would have to be struck down.

37. In Shyam Behari and Others v. State of Madhya Pradesh and Others [1964 (6) SCR 636], it was held :

In the second place, the declaration under s. 6 may be made that land is needed for a company in which case the entire compensation has to be paid by the company. It is clear therefore that where the entire compensation is to be paid by a company, the notification under s.6 must contain a declaration that the land is needed for a company. No notification under s. 6 can be made where the entire compensation is to be paid by a company declaring that the acquisition is for a public purpose, for such a declaration requires that either wholly or in the part, compensation must come out of public revenues or some fund controlled or managed by a local authority

38. Distinction between acquisition under Part II and Part VII are self- evident. The State was not only obligated to issue a notification clearly stating as to whether the acquisition is for a public purpose or for the company. Section 6 categorically states so, as would appear from the second proviso appended thereto.

39. A declaration is to be made either for a public purpose or for a company. It cannot be for both.

40. It is furthermore trite that Land Acquisition Act is an expropriatory legislation. [See Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai & Ors. (2005) 7 SCC 627; and Chairman, Indore Vikas Pradhikaran v. M/s Pure Industrial Cock & Chem. Ltd. & Others [2007 (8) SCALE 110]

41. Expropriatory legislation, as is well-known, must be strictly construed. When the properties of a citizen is being compulsorily acquired by a State in exercise of its power of Eminent Domain, the essential ingredients thereof, namely, existence of a public purpose and payment of compensation are principal requisites therefor. In the case of acquisition of land for a private company, existence of a public purpose being not a requisite criteria, other statutory requirements call for strict

compliance, being imperative in character.

42. Another question which arises for our consideration is as to whether Rule 4 of the Companies Rules is mandatory or directory in nature. The High Court held it to be directory.

43. Rule 4 of the Rules employs the word shall not once place but twice. Ordinarily, it is imperative in character. No reason has been shown before us as to why it should be held to be directory provision particularly when the Land Acquisition Act is an expropriatory legislation.

44. In State of Gujarat and Another v. Patel Chaturbhai Narsibhai and Others [AIR 1975 SC 629], this Court held : 15. The contention of the State that the enquiry under Rule 4 is administrative and that the owner of the land is not entitled to be given an opportunity to be heard at the enquiry cannot be accepted for these reasons. The enquiry under Rule 4 shows that the Collector is to submit a report among other matters that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed. The persons interested therein are the owners of the land which is proposed to be acquired. The Company at such an enquiry has to show that the company made negotiations with the owners of the land. The owners of the land are, therefore, entitled to be heard at such an enquiry for the purpose of proving or disproving the reasonable efforts of the company to get such land by negotiation. The contention on behalf of the State that the owners of the land will get an opportunity when an enquiry is made under Section 5A of the Act is equally unsound. Section 17 of the Act provides that the appropriate Government may direct that the provisions of Section 5A shall not apply, and if it does so direct a declaration may be made under Section 6 at any time after the publication of the notification under Section 4 of the Act. Therefore, the enquiry under Section 5A may not be held.

45. In General Government Servants Cooperative Housing Society Ltd., Agra etc. v. Sh. Wahab Uddin and Others etc. [(1981) 2 SCC 352], this Court held :

13. Sub-rule (1) requires the Government to direct the Collector to submit a report to it on the matters enumerated in Clauses (i) to (vi) of the Sub-rule (1) which is for the benefit of the Company. The purpose is to avoid acquisition of land not suitable for a Company. Clause (ii) of Sub-rule (1) requires that the Company has to make all reasonable efforts to get such lands by negotiation with the person interested therein on payment of reasonable prices and that such efforts have failed. The purpose of Clause (ii) seems to be to avoid unnecessary land acquisition proceedings and payment of exorbitant prices. The purpose of Clauses (iii), (iv) and (v) is obvious. The purpose of Clause (vi) is to avoid acquisition of good agricultural land, when other alternative land is available for the purpose. Sub-rule 2 of Rule 4 requires the Collector to give reasonable opportunity to the Company so that the Collector may hold an inquiry into the matters referred in Sub-rule (1). The Collector has to comply with Clauses (i), (ii) and (iii) of Sub-rule 2 during the course of the inquiry under Sub- rule (1). The Collector under Sub-rule 3 then has to send a copy of his report of the inquiry to the appropriate Government and a copy of the report has to be forwarded by the Government to the Land Acquisition Committee constituted under Rule 3 for the purpose of advising the Government in relation to acquisition of land under Part VII of the Act, the duty of the Committee being to advise the Government on all matters relating to or arising out of acquisition of land under Part VII of the Act (Sub-rule (5) of Rule 3). No declaration shall be made by the appropriate Government under Section 6 of the Act unless the Committee has been consulted by the Government and has considered the report submitted by the Collector under Section 5A of the Act.

In addition, under Clause (ii) of Sub-rule (4) of Rule 4, the Company has to execute an agreement under Section 41 of the Act. The above consideration shows that Rule 4 is mandatory; its compliance is no idle formality, unless the directions enjoined by Rule 4 are complied with, the notification under Section 6 will be invalid. A consideration of Rule 4 also shows that its compliance precedes the notification under Section 4 as well as compliance of Section 6 of the Act.

46. In M/s Fomento Resorts and Hotels Ltd. v. Gustavo Ranato Da Cruz Pinto and Others [(1985) 2 SCC 152], a three-Judge Bench of this Court categorically held :

17. Reading the Act and the Rules and keeping in view the scheme of the Act, it is apparent, in our opinion, that before the issuance of Section 4 notification, there is no requirement as such of compliance with the procedure contemplated by Rule 4 of the Rules. We are therefore unable to subscribe to the view that enquiry by Rule 4 must precede the issuance of notification under Section 4(1) of the Act. Furthermore as indicated before certain matters which are required to be done under Rule 4 can not be done because the officer or the person authorised by him would have no authority unless notification under Section 4 is issued.

47. Repelling a contention that the provisions of Sections 6 to 37 are not required to be complied with in view of Section 39 thereof, it was held :

This Section, in our opinion, has no relevance for determining whether to be a proper acquisition, enquiry contemplated under Rule 4 must precede issuance of the notification under Section 4 of the Act

48. The lands in question are recorded as Shahi lands. It is not in dispute that they are agricultural lands. The Act contemplates that such lands may not be acquired.

49. We may notice that in Collector (District Magistrate) Allahabad and Another etc. v. Raja Ram Jaiswal etc., (1985) 3 SCC 1] this Court held that such a contention requires an indepth study, stating : 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 Land 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.

It is, on that premise, we have undertaken some study in this behalf.

50. The decision of this Court in Somawanti (supra) holding that the stage at which Rule 4 is required to be complied with is not the stage prior to issuance of a notification under Section 4 of the Act, but declaration under Section 6 does not appear to be correct from the decisions of this Court in Patel Chaturbhai Narsibhai (supra) and Wahab Uddin (supra), the earlier binding precedent, with utmost respect, having not been taken into consideration in its entirety.

51. In Abdul Husein Tayabali & Others v. State of Gujarat & Others 1968 (1) SCR 597], this Court observed :

Next it was urged that the inquiry under Rule 4 has to be held after the notification under section 4 is issued and not before and therefore the inquiry held by Master was not valid. We do not find anything in Rule 4 or in any other Rule to warrant such a proposition. The inquiry, the report to be made consequent upon such inquiry, obtaining the opinion of the Land Acquisition Committee, all these are intended to enable the Government to come to a tentative conclusion that the lands in question are or are likely to be needed for a public purpose and to issue thereafter section 4 notification.

52. In Srinivasa Cooperative House Building Society Ltd. v. Madam Gurumurthy Sastry and Others [(1994) 4 SCC 675], noticing Somavanti (supra) wherein it was held that the manufacturing of the articles was for the benefit of the community and to save substantive part of foreign exchange and staff quarters to workmen, it was held : On the other hand, in the case of an acquisition for a company, the compensation has to be paid by the company. In such a case there can be an agreement under Section 41 for transfer of the land acquired by the Government to the company on payment of the cost of acquisition, as also other matters. The agreement contemplated by Section 41 is to be entered into between the company and the appropriate Government only after the latter is satisfied about the purpose of the proposed acquisition, and subject to the condition precedent that the previous consent of the appropriate Government has been given to the acquisition. Section 6 is in terms, made subject to the provisions of Part VII of the Act. The declaration for acquisition for a company shall not be made unless the compensation to be awarded for the property is to be paid by a company. In the case of an acquisition for a company simipliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition is for a public purpose and that the cost of acquisition should be borne, wholly or in part, out of public funds. Hence an acquisition for a company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition, for a company is to be made at the cost entirely of the company itself, such an acquisition comes under the provisions of Part VII

53. The approach of the High Court in this behalf, in our opinion, is totally erroneous. A provision of a statute is either mandatory or directory. Even if a provision is directory, the same should be substantially complied with. It cannot be ignored in its entirety only because the provision is held to be directory and not an imperative one.

54. In this case admittedly there has been no compliance of Rule 4. If Rule 4 has not been complied with, the exercise of jurisdiction under Part VII must be held to have been erroneous.

55. For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeals are allowed with costs. Counsels fee assessed at Rs.25,000/- (Rupees twenty five thousand only).