**SUPREME COURT OF INDIA**

Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd.

Vs.

State of Rajasthan

C.A.No.4824 of 2013

(P.Sathasivam and Jagdish Singh Khehar JJ.)

01.07.2013

**JUDGMENT**

**JAGDISH SINGH KHEHAR**

1. The instant common order will dispose of the following matters:-

(i) Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd. vs. State of Rajasthan & Ors., Civil Appeal arising out of SLP (C) No. 4722 of 2012);

(ii) Yogesh Chand Arora vs. State of Rajasthan & Ors., Civil Appeal arising out of SLP (C) No. 4874 of 2012);

(iii) Durga Devi Dharmarth Trust & Anr. vs. State of Rajasthan & Ors., Civil Appeal arising out of SLP (C) No. 5041 of 2012);

(iv) Naresh Chand Arora vs. State of Rajasthan & Ors., Civil Appeal arising out of SLP (C) No. 5089 of 2012);

(v) Madrampura Grih Nirman Sahkari Samiti Ltd. & Ors.vs. State of Rajasthan & Ors., Civil Appeal arising out of SLP (C) No. 5206 of 2012);

(vi) Yashmeen Abrar vs. Union of India & Ors., Civil Appeal arising out of SLP (C) No. 12072 of 2012);

(vii) Sunita Rathi & Ors. vs. State of Rajasthan & Ors., Civil Appeal arising out of SLP (C) No. 21205 of 2012);

(viii) Arjun Nagar Vikas Samiti through its President Vimla Verma vs. State of Rajasthan & Ors., Civil Appeal arising out of SLP (C) No. 21226 of 2012);

2. Leave granted in all the matters.

3. Insofar as the instant judgment is concerned, Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd. vs. State of Rajasthan & Ors. (i.e., the Civil Appeal arising out of SLP (C) No. 4722 of 2012 shall be treated as the lead case. The factual narration recorded herein, shall be based on the pleadings thereof. However, in situations wherein, during the course of hearing, reference has been made to pleadings from other cases, the same will also be adverted to.

4. The appellants herein are all land losers. Their lands were acquired for establishing a zonal office complex, and residential quarters for Railway staff, for the North Western Railway Zone, at Jaipur in the State of Rajasthan.

5. The sequence of facts commencing from the initiation, and leading to the finalization of the acquisition proceedings, are of pointed significance, in the present controversy. As such, all the relevant factual details, are being narrated hereunder, first of all.

6. On 15.11.1996, the Officer on Special Duty, North Western Railway, posted at Jaipur, addressed a communication to the Commissioner, Jaipur Development Authority, Jaipur, indicating that 26 bighas of Government land was available in front of the Getor Jagatpura railway station. It was pointed out, that the aforesaid land had been allotted to the Scouts & Guides Organization. It was submitted, that the said land was ideally located, and could be effectively put to use for establishing the required infrastructure for the North Western Railway Zone complex, at Jaipur. It was accordingly requested, that the said Government land be transferred to the Railways. A relevant extract of the aforesaid letter is reproduced hereunder:-

> "As you are aware, the new North-Western Railway Zone has been set up with headquarters at Jaipur.
>
> The actual requirements of land for setting up of the Zonal office and Quarters at Jaipur is being worked out which may take some time, but in any case adequate railway land is not available at Jaipur for the purpose.

It is understood that 26 Bighas of land of the State Government to allotted to Scouts & Guides Organization is available in front of Getor Jagatpura Railway Station. This is an ideal location for use by the North-Western Railway and it is requested that this land may be transferred to Railway early for immediate use. Further requirements of land will be indicated to the State Government in due course." (emphasis is ours)

The first communication on the record of the case, relating to the requirement of land for setting up the North Western Railway Zone Complex, reveals the desire (of the Railways), that vacant Government land be transferred by the State Government, to the Railways. At this juncture, one would notice, that there is no thought about acquiring land for the Railways.

7. Following the aforesaid communication dated 15.11.1996, the Officer on Special Duty, North Western Railway, addressed another letter dated 12.12.1996 to the Commissioner, Jaipur Development Authority, Jaipur, depicting the total requirements of the Railways for setting up the aforesaid zonal headquarters. The text of the said letter is being reproduced hereunder:-

"In continuation of this office letter referred above the appropriate requirement of land for setting up of the zonal office and staff quarters at Jaipur has been assessed and about 87 acres of land is considered as necessary for this purpose.

It is proposed to have the land for the above purpose at the locations at Getor Jagatpura. At least 40 acres of land will be required including the 20 bigha for which a request has already been made for transfer vide this office letter referred above. For the reasoning 47 acres land nearest to the Jaipur Railway Station in the Prithviraj Nagar on Jaipur-Ajmer Road will be suitable.

It is therefore requested that 40 acres land including 20 bigha of State Government land now used by scouts and guides at Getor Jagatpura and 47 acres land in Prithviraj Nagar scheme on Jaipur Ajmer Road nearest to Jaipur Railway Station may be acquired and transferred to Railways.

Necessary plans of both the areas may kindly be made available to Railways."

(emphasis is ours)

In its follow up action, the State Government was informed about the extent of land required. The Railways sought governmental land to satisfy its requirement. The process thus suggests, that the Railways and the State Government, were jointly pursuing the objective. The State Government was requested to acquire some more land, so as to make up the deficiency, and to transfer the same to the Railways.

8. Mr. Ram Vilas Paswan, the then Union Minister for Railways addressed a letter dated 30.12.1996 to Mr. Bhairon Singh Shekhawat, the then Chief Minister of the State of Rajasthan, indicating the Union Government's desire, to set up a zonal complex for the North Western Railways, at Jaipur. The Railways requested the State Government, to provide the required land "free of cost". It was emphasized by the Union Minister for Railways, that the setting up of the new Railway Zone at Jaipur, would improve train services to and within the State of Rajasthan, and thereby, meet the expectations of public and private entities, of the area. Relevant extract of the aforesaid letter is being reproduced hereunder:-

"In order to improve the train services in Rajasthan, meet the expectations of public and private more responsive administration, the Railways have decided to create a new Zone, North Western Railway with Zonal Hqrs. Office at Jaipur.

The setting up of the Railway Zonal Hqrs. Office, would require office accommodation, housing for staff, and other ancillary facilities, all of which need about 150 to 200 acres of land.

May I therefore request you to ask the concerned officials to identify a suitable piece of land, about 150-200 acres at Jaipur, and provide the same to the Railways free of cost for setting up the Zone. This gesture of the State Government would go a long way in enabling us to make the Zone functional early."

(emphasis is ours)

A perusal of the aforesaid letter reveals, that the Railway Ministry's request was for about 150-200 acres of land. The land would be used for establishing zonal offices for the North Western Railway Zone, and also, for raising residential quarters for Railway staff. The letter indicated, that the

gesture of the State Government to provide land to the Railways "free of cost", would go a long way in making the zone functional. If the acquired land, was to exclusively serve the purpose of the Railways, then financial contribution thereto by the State Government, would be unthinkable. But strangely, the Union Minister for Railways was expecting the State Government to provide the required land, even after acquiring it, "free of cost". Logically, this would be acceptable, when the State (of Rajasthan) was to be a joint beneficiary. The incidental benefit to the State, is apparent from the opening words of the letter. The Union Minister in his above letter emphasized, that the proposed project would "…improve the train services in Rajasthan, meet the expectations of public and private…".

9. On 28.2.1997, the Commissioner, Jaipur Development Authority, pursuant to the correspondence with the Officer on Special Duty, North Western Railway, pressed the Secretary, Department of Transport, Government of Rajasthan, to initiate acquisition proceedings in respect of land identified at villages Bindayaka and Todi Ramjanipura, in tehsil Sanganer of district Jaipur. Relevant portion of the aforesaid letter is being reproduced below:-

> "Please peruse the letter dated 12.12.1996 by Officer, North Western Railway Zone, Jaipur. The Railway had demanded land for Railway Zonal Office and staff quarters. You have discussed in this reference with the Commissioner in the room of Chief Secretary. The land village Bindayaka and Todi Ramjanipura, Tehsil Sanganer is required by Railway department being near to the Jagatpura Getor Railway Station.
>
> It would be relevant to acquire the required land by Transport Department, Rajasthan, Jaipur. Therefore, the proceedings of acquisition of 4-39 hectares of land of village Bindayaka and 9-91 hectares of Todi Ramjanipura, Tehsil Sanganer, Jaipur is to be acquired. The description of the land to be acquired, trace map and six copies of land record are annexed with the prayer that the acquisition proceedings be done at your department level for the Railway Department immediately."
>
> (emphasis is ours)

10. On 29.3.1997, the Deputy Secretary, Transport Department, Government of Rajasthan, wrote a letter to the District Collector, Jaipur, requiring him to furnish details of land, as also, land records pertaining to villages Bindayaka and Todi Ramjanipura, which was being considered for acquisition for the North Western

Railway Zonal complex. The text of the aforesaid letter, is being reproduced hereunder:-

> "The Secretary, Jaipur Development Authority, Jaipur by letter no. P9 (295) JDA/Acqui. Off./Land Acqui./97/362 dated 20.2.1997 informed this office that Railway Department vide letter dated 12.12.1996 placed a proposal for the land for Zonal Office in Jaipur and Staff Quarters. As per proposal land of village Bindayaka and Todi Ramjanipura, Tehsil Sanganer, Jaipur near Getor Jagatpura Railway Station is to be acquired. In this reference information regarding details of land, trace map and land record alongwith the process of acquisition and inspection report of the acquisition officer be sent to this office." (emphasis is ours)

11. On 9.5.1997, a communication was addressed by the Officer on Special Duty, North Western Railway, to the Chief Secretary, Government of Rajasthan, reminding him of the request made by the Union Minister for Railways. Relevant extract of the said communication dated 9.5.1997, is being set out hereunder:-

> "It had been requested by Hon'ble Minister for Railways, vide this D.O. letter referred above (copy enclosed). To the Chief Minister of Rajasthan, to identify a suitable piece of land about 150-200 acres at Jaipur and to provide the same to the railways, free of cost, for setting up of new Railway Zone at Jaipur. Action taken in the matter by the State Government may please be advised, for taking further necessary action accordingly.
>
> The State Government officials required to be contacted for pursuing the case may also please be advised so as to enable me to instruct my officers for expediting the process of acquisition of land for setting up of facilities for North Western Railway zone."
>
> (emphasis is ours)
>
> A perusal of the letter extracted above reveals, that officers of the Railways establishment were in touch with highest levels of governmental functionaries in the State of Rajasthan, and were seriously soliciting land "free of cost" for establishing the North Western Railway Zone complex.

12. Pursuant to the aforesaid correspondence, the Secretary, Transport Department, Government of Rajasthan issued a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as, the Acquisition Act), indicating

the State Government's desire to acquire 15.50 hectares of land situated in the revenue estate of villages Bindayaka and Todi Ramjanipura, in tehsil Sanganer, of district Jaipur. The public purpose depicted therein was, that the aforesaid land was required to establish a zonal office of the North Western Railways and for raising residential quarters for Railway staff. The aforesaid notification was duly published in the State Government gazette. Importantly, the acquisition of land for the project under reference, was being made by the Transport Department of the Government (of Rajasthan), presumably because the setting up of the project was aimed at improving transport services to and within the State, for the benefit of public and private entities. In terms of the mandatory requirements of the Acquisition Act, the aforesaid notification under Section 4, was published on 6.9.1997 in the "Dainik Navjyoti" and on 7.9.1997 in the "Rajasthan Patrika". The pleadings of the case bear-out, that publication in the locality was also made on 10.4.1998.

13. Yet again, the Deputy Chief Engineer, North Western Railway addressed a communication dated 11.6.1998 to the Deputy Secretary, Transport Department, Government of Rajasthan intimating him, that even though permission had been received to acquire 69 bighas (17.52 hectares) of land near Getor Jagatpura railway station, yet no further details had been communicated by the State Government, in respect of the action taken by it, for acquiring the aforesaid land for the Railways, after the publication of the notification under Section 4 of the Acquisition Act. The aforesaid factual position, is evident from the letter dated 11.6.1998, which is reproduced hereunder:-

> "In the above subject it is submitted that there is no information of further proceedings after notification under Section 4 has been published on 19.8.1997. Please, inform this office immediately after proper proceedings to acquire land for Railway Zonal Office and staff quarters.
>
> It is pertinent to mention that permission has been received by this office from Railway Ministry to acquire 69 bighas (17.52 hectare) land near Getor Jagatpura Railway Station. Hence inform this office immediately regarding proceedings to acquire of the above land."
>
> The above communication reveals that the Railways, as well as, the State Government were proceeding in the matter in complete tandem.

14. Objections were invited under Section 5A of the Acquisition Act from persons interested in the land. Having considered the objections raised by the persons

interested, the Land Acquisition Collector submitted a report to the Government. Insofar as Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd. (appellant in the Civil Appeals arising out of SLP (C) no. 4722 of 2012, which is hereinafter referred to as, the appellant Samiti) is concerned, the determination was as under:-

> "An application on 8.4.2009 was filed by Shrawan Singh Khinchi, Hemant Goyal, Prabhu Lal Meena, Sharda Purohit, Nirmala, Suresh Kumar Sharma, Yogesh Aroda, Naresh Chand Aroda, Ganga Sahay Meena, residents/members of Madrampura Grih Nirman Sahakari Samiti planning Prakash Nagar and Gopalpura Grih Nirman Sahakari Samiti planning Jagatppura first (Mayur Vihar) stating that the tenants of Khasra no. 280, 282, 284 and 291 Girijadevi and Rampal Das Swami sold and handed over the possession of the land to Madrampura Grih Nirman Sahakari Samiti and Gopalpura Grih Nirman Sahakari Samiti in 1981 and received the entire sale consideration. The societies have allotted the land to the plot holders/members from 1981 to 1983 and most of the members have constructed houses before the acquisition proceedings. The applicants have submitted that the houses have been constructed before the acquisition proceedings. Hence if the land is left out of acquisition being on one side corner only, it will not affect the railway scheme. The applicants submitted that the tenant Girija Devi and Rampal Das Swami are not interested persons, therefore, their objections should not be considered and they should be given 15 days time to file objections.
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> Objections of the applicants were considered and the application dated 8.4.1999 is filed which is after due date 5.4.1999. Even then the claim is being decided on merits in the interest of justice. The applicants have not produced any documents or evidence in their favour. As it is determined hereinabove that the society cannot get any right only on the basis of agreement to sale and similarly the members cannot get any legal right on the basis of allotment letter issued by society. This matter is purely a matter between the Khatedar and society and its members. The plot holders cannot be considered as interest persons to get compensation. They can get compensation from the Khatedars. Hence the objection is rejected. (emphasis is ours)

A perusal of the aforesaid determination reveals, that the appellant Samiti had not filed its objections within the prescribed period of limitation, and as such, its objections could have been rejected simply because the same were filed belatedly. Yet the matter was examined on merits. The claims of the

appellant Samiti were found to be unsustainable because the appellant Samiti did not have any right to file objections. In this behalf it was noticed, that the appellant Samiti had relied on agreements to sell in respect of the acquired land. Agreements to sell, it was felt, did not vest any legal right in the appellant Samiti (on the date of issuance of the notification under Section 4 of the Acquisition Act).

15. On 19.8.1997, the State Government authorized the OSD-II i.e. the Collector, Jaipur, to enter into the land sought to be acquired.

16. After having dealt with the objections of interested persons including the appellant Samiti, on the subject of compensation, it was observed as under:-

> It was considered as to who should be given the compensation of the acquired land. The objections filed before this court makes it clear that certain Khatedar tenants have transferred their land to the housing societies or certain other persons and construction has also been made by such persons. First of all, no such sale agreement has been filed before this court. Secondly land cannot be considered to be sold on the basis of agreement to sale. According to Section 17 of the Registration Act, any immoveable property of value more than Rs.100/- is required to be registered compulsorily. Hence any transfer of possession by unregistered document is not valid. Hon'ble Rajasthan High Court has confirmed this view in Writ Petition no. 2027/92, 1017/92, 4102/91 by judgment passed on 8.12.1992. Hence the transfer by way of agreement to the housing society cannot be recognized. And subsequent transfer of possession is illegal. It has been settled in the case of Banwari Lal Vs. State of Rajasthan & Ors., 1986 (2) WLN 648, that such transfer of land for non-agricultural purpose is useless. Transfer of agricultural land for non- agricultural purposes is against the provisions of Section 42A of the Rajasthan Tenancy Act and Section 90A of the Land Revenue Act. Thus any constructions made by persons other than Khatedars on the land under acquisition are illegal. Therefore compensation for the illegal construction is not proper."
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> (emphasis is ours)

17. Having rejected the objections raised by the persons interested (including all those at whose behest, the present proceedings have been initiated before this Court), the State Government notified its declaration under Section 6 of the Acquisition Act, in the State Government gazette, expressing its final

determination for acquiring the land in question. The aforesaid declaration dated 13.1.1999 was published in the State Government gazette dated 21.1.1999.

18. Thereafter, public notices were issued by the Land Acquisition Officer, intimating all interested persons the intent of the State Government to take possession of the acquired land. On 21.3.2001, the Land Acquisition Officer passed an award, determining the compensation payable to land owners, whose land was being acquired.

19. The first contention advanced at the hands of the learned counsel for the appellants was, that the instant acquisition proceedings emerging out of the notification issued under Section 4 of the Acquisition Act (dated 19.8.1997), and the consequential declaration under Section 6 of the Acquisition Act (dated 13.1.1999) could not have been issued by the State Government. In fact, it was the pointed submission of the learned counsel for the appellants, that the State Government had no jurisdiction to acquire the land in question. In this behalf it was submitted, that the land was for the use and utility of the Railways, namely, for establishing zonal offices for the North-Western Zone, as also, for raising residential quarters for the staff to be posted there. Since Railways is a Union subject (under entry 22 of the Union List, in the Seventh Schedule to the Constitution of India), it was submitted, that it is the Union Government alone, which had the jurisdiction to acquire the land in question. In so far as the instant aspect of the matter is concerned, learned counsel for the appellants invited our attention to Sections 4 and 6 of the Acquisition Act. The aforesaid provisions are being extracted herein:

> "4. Publication of preliminary notification and powers of officers thereupon—
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> (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language] and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification.

(2) Thereupon it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf, and for his servants and workmen, to enter upon and survey and take levels of any land in such locality;

to dig or bore in the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches,

and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling- house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

xxx xxx xxx

6. Declaration that land is required for a public purpose.— (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders an different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (!), irrespective of whether one report or different reports has or have been made (wherever required) under section 5-A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),--

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1.-In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.-Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues].

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making

such declaration the appropriate Government may acquire the land in manner hereinafter appearing."

(emphasis is ours)

A perusal of Sections 4 and 6 extracted above reveal, that it is the "appropriate Government" which is to be satisfied about the public purpose for which the land in question is to be acquired. And it is the "appropriate Government" alone, which is vested with the responsibilities contemplated under the aforesaid Sections 4 and 6. Accordingly, it is only the "appropriate Government" which can issue the required notifications expressing the intention to acquire land, and thereafter, the postulated declaration, after examining the objections of the persons interested.

20. In order to substantiate the appellants' contention, that jurisdiction to acquire land for the Railways, could have been exercised only by the Central Government, and that the State Government had no authority to acquire land for the Railways, learned counsel placed reliance on Section 3(ee) of the Acquisition Act. Section 3(ee) aforementioned is being reproduced below :

"3(ee) The expression "appropriate Government" means in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government."

Relying on Section 3(ee) extracted above, it was the submission of the learned counsel for the appellants, that in relation to acquisition of land for the Union, the Central Government alone had the jurisdiction to acquire the land. Accordingly, it was contended, that it was the Central Government alone, which had the jurisdiction to issue the prescribed notification under Section 4 of the Acquisition Act, (expressing the intention of the Union Government to acquire, the land). Having thereby, brought the "appropriate Government's" intention to acquire the land to the notice of all interested persons, and having considered the objections (if any) filed at the behest of such interested persons, the Central Government alone could have issued the consequential declaration under Section 6 of the Acquisition Act. Learned Counsel for the appellants was emphatic, that the notification to acquire land for the Railways could have only been issued by the Central Government.

21. Learned counsel for the appellants ventured to substantiate his above contention, by reading the definition of the term 'appropriate Government' along with the said words used in Sections 4, 5, 5A(2), 6, 7, the first and second proviso to Section 11(1), Sections 12 to 14, 15A, 16, 17(1) and (2), 31(3), 40, 41, 48, 49(2) and 50 of the Acquisition Act. The thrust of the instant submission is being summarized hereunder:

> Firstly, referring to Section 4 of the Acquisition Act, it was the submission of the learned counsel for the appellants, that the use of the term "appropriate Government" in Section 4(1) of the Acquisition Act, with reference to the publication of the intention to acquire land (by way of a notification) has to be visualized with reference to the definition of the said term under Section 3(ee) of the Acquisition Act. On such examination, according to the learned counsel, it would clearly emerge, that it was only the Central Government which could have issued the notification dated 19.8.1997. But in the present case, the said notification has been issued by the Government of Rajasthan.
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> Secondly, with reference to Section 5 of the Acquisition Act, it was submitted, that the term "Collector" used therein, must be viewed with reference to Section 3(c) of the Acquisition Act. Section 3(c) is being extracted hereunder:
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> "3(c) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Appropriate Government to perform the functions of a Collector under this Act"
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> Based on the aforesaid definition of the term "Collector, it was the contention of the learned counsel for the appellants, that the nomination of the "Collector/Deputy Commissioner/Officer specially appointed" has to be made by the "appropriate Government". Since the "appropriate Government" in the facts and circumstances of the present case is the Central Government, according to the learned counsel, the nomination of the 'Collector' with reference to Section 5 of the Acquisition Act, could only have been ordered by the Central Government; whereas, it is apparent from the facts of this case, that the State Government by an order dated 19.8.1997, authorized the SDO-II/Land Acquisition Officer/Collector, Jaipur, as "Collector" for all purposes connected with the present acquisition. The nomination of the Collector by the State Government, when the land was

being acquired for the benefit of the Railways, according to the learned counsel, was clearly beyond the jurisdiction of the State Government.

Thirdly, with reference to Section 5A(2) of the Acquisition Act, it was submitted, that the objections under Section 5 of the Acquisition Act are to be made to the Collector in writing. And, it is the Collector who is to afford an opportunity of hearing to the persons concerned, before submitting a report to the appropriate Government. Learned counsel vehemently contended, that in interpreting Section 5A(2) of the Acquisition Act, the term 'Collector' has to be interpreted in consonance with the definition thereof under Section 3(c), and with reference to the term "appropriate Government" defined in Section 3(ee) of the Acquisition Act. Thus viewed, it was the submission of the learned counsel, that not only the "Collector" to whom objections were meant to be addressed, but the Collector who had to consider and dispose of the said objections, ought to have been a person nominated by the Central Government. Herein, according to the learned counsel, admittedly the State Government had notified the "Collector" for acquisition of the land in question. The receipt of the objections, as also, the determination thereof, must, therefore, be deemed to have been rendered by an authority having no jurisdiction (either to receive the objections or to submit a report to the appropriate Government with reference to said objections), in the matter.

Fourthly, it was contended, that the declaration under Section 6 of the Acquisition Act is to be made on the satisfaction of the "appropriate Government". Herein also, viewed with reference to the definition of the term 'appropriate Government' in Section 3(ee) of the Acquisition Act, it was submitted, that it was the Central Government alone whose satisfaction was material, whereupon, the Central Government could have issued the postulated declaration (contemplated under Section 6 of the Acquisition Act). Herein, according to the learned counsel, admittedly the declaration was made on 13.1.1999 by the State Government under Section 6 of the Acquisition Act. As such, it was asserted that the same lacked any authority of law.

Fifthly, according to the learned counsel for the appellants, under Section 7 of the Acquisition Act, after complying with the procedure contemplated under Section 6, the "appropriate Government" (or some officer authorized by the "appropriate Government") is to direct the Collector "to take order for the acquisition of the land". The aforesaid procedure contemplated under

Section 7, according to learned counsel for the appellants, has also been vested with the Central Government. Insofar as the present acquisition proceedings are concerned, it was the Central Government which had to direct the Collector to take appropriate action contemplated under Section 7 of the Acquisition Act. Since in the facts of the instant case, it is the Government of Rajasthan, which had issued the aforesaid direction, according to learned counsel, the same violates the mandate of Section 7 of the Acquisition Act.

Sixthly, learned counsel for the appellants placed reliance on the first and the second provisos to the Section 11(1) of the Acquisition Act, in order to contend, that while preparing the award with reference to the acquired land, and while determining the true area of the acquired land, and the compensation payable therefor, as also, the appropriation of such compensation amongst persons interested, the power and authority therefor, is vested in the Collector (with the previous approval of the "appropriate Government"). Yet again, it was the contention of the learned counsel for the appellants, that the provisos referred to hereinabove, were bound to be appreciated with reference to the definition of the term "Collector" in Section 3(c), and the term 'appropriate Government' under Section 3(ee) of the Acquisition Act. In so doing, according to learned counsel, the inevitable result would be, that the "appropriate Government" contemplated, is the Central Government. And, accordingly, the Collector contemplated therein, would be one nominated by the Central Government. It was pointed out, that for the acquisition proceedings under reference, the approval of the State Government, and not the Central Government was sought by the Collector. It was further pointed out, that the concerned Collector had been nominated by the State Government. For the aforesaid reasons (principally on the same basis, as noticed in the foregoing contentions), it was submitted, that the instant action of acquisition, was in clear violation of the mandate of the provisions of the Acquisition Act. According to learned counsel, all the above actions, had to be taken by a Collector nominated by the Central Government, and upon the previous approval of the Central Government. Since the position in the facts and circumstance of the present case is not so, it was submitted, that the instant process of acquisition, was in clear violation of the mandate of the above-mentioned provisions of the Acquisition Act.

Seventhly, with reference to Sections 12, 13, 13A and 14, it was submitted, that the term 'Collector' used therein, had to be viewed with reference to

Section 3(c) of the Acquisition Act, inasmuch as, the Collector in the facts of the present case, had to be nominated by the Central Government, and therefore, for the procedure contemplated by the provisions referred to above, was required to be executed by a Collector nominated by the Central Government. In the present case, the State Government, by its order dated 19.8.1997 authorized the SDO-II/Land Acquisition Collector, Jaipur, to carry out the functions contemplated under Sections 12, 13, 13A and 14 of the Acquisition Act. As such, according to learned counsel, the aforesaid procedure having been carried out by a person having no authority to do so, must be deemed to have been carried out without jurisdiction, and in violation of the above mentioned provisions of the Acquisition Act.

Eighthly, the term 'appropriate Government' referred to in Sections 16, 17(1), 17(2), 31(3), 40, 41 and 49(2), according to the learned counsel, could only have meant the Central Government, and not the State Government. It was submitted, that in giving effect to the above provisions, the Central Government had unquestionably remained out of reckoning, and it was the Government of Rajasthan, which has shouldered all the responsibilities contemplated under the said provisions. For just the same reasons, as have been noticed above, it was submitted that the scheme of the Acquisition Act very clearly defines the manner in which the provisions thereunder, were to be given effect to. Since the land was being acquired for the Railways, according to learned counsel representing the appellants, the responsibilities ought to have been shouldered by the Central Government, whereas, the entire action for the acquisition of the land in the present controversy, was dealt with by the State Government.

22. Having given our thoughtful consideration to the issue canvassed at the hands of the learned counsel for the appellants, we are of the view that it is necessary in the first instance to determine the subject of legislative competence. If the determination of legislative competence so determined falls in the realm of the Parliament, then the contemplated appropriate Government would be the Central Government. Whereas, if the legislative competence falls in the realm of the State Legislatures, then the appropriate Government in the facts and circumstances of the present case would be the State Government. During the course of hearing, while examining the issue of legislative competence, our attention was invited to entry 33 of the Union List, entry 36 of the State List and entry 42 of the Concurrent List (of the Seventh Schedule of the Constitution of India). All the aforesaid entries are being extracted hereunder: Entry 33 (in list I, of the Seventh Schedule)

"33. Acquisition or requisitioning of property for the purposes of the Union."

Entry 36 (in list II, of the Seventh Schedule)

"36. Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III."

Entry 42 (in list III, of the Seventh Schedule)

"42. Acquisition and requisitioning of property."

Before proceeding further, it would be relevant to point out that entries 33 and 36 (in lists I and II respectively, of the Seventh Schedule) were omitted by the Constitution (Seventh Amendment) Act, 1956. And in place of the above two entries, entry 42 (in list III, of the Seventh Schedule) was substituted (through the same constitutional amendment). Prior to above substitution, Entry 42 in List III read as under:

Entry 42 (in list III, of the Seventh Schedule), prior to its substitution:

"42. Principles on which compensation for property acquired or requisitioned for the purpose of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given."

23. The scope and effect of aforesaid three entries, falling in three different lists of the Seventh Schedule were examined by a Constitution Bench of this Court in State of Bombay v. Ali Gulshan, AIR 1955 SC 810. The question posed, and the determination rendered thereon, are being extracted hereunder:

"2. On the hearing of the petition before Tendolkar, J., the State succeeded on the ground that the purpose for which the requisition was made was a "public purpose" within the meaning of the Act. But, on appeal, it was held that though the requisition was for a public purpose, the requisition order was invalid, as the public purpose must be either a purpose of the Union, or a purpose of the State and in this particular case the accommodation being required for housing a member of a foreign Consular staff was a Union purpose, which was outside the scope of the powers of the State.

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5. The ultimate source of a authority to requisition or acquire property is be found in article 31 of the Constitution. The requisition or acquisition must be for a public purpose and there must be compensation. This article applies with equal force to Union legislation and State legislation. Items 33 and 36 of List I and List II of the Seventh Schedule to the Constitution empower respectively Parliament and the State Legislatures to enact laws with respect to them.

6. The reasoning by which the learned appellate Judges of the Bombay High Court reached their conclusion is shortly this. There can be no public purpose, which is not a purpose of the Union or a purpose of the State. There are only these two categories to consider under the statute, as the words "any other purpose" in the particular context should be read ejusdem generis with "the purpose of the State". The provision of accommodation for a member of the foreign consulate staff is a "purpose of the Union" and not a "purpose of the State".

7. We are unable to uphold this view as regards both the standpoints. Item 33 in the Union Legislative List (List I) refers to "acquisition or requisitioning of property for the purposes of the Union". Item 36 in the State List (List II) relates to "acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III". Item 42 of the Concurrent Legislative List (List III) speaks of "the purpose of the Union or of a State or for any other public purpose".

Reading the three items together, it is fairly obvious that the categories of "purpose" contemplated are three in number, namely, Union purpose, State purpose, and any other public purpose. Though every State purpose or Union purpose must be a public purpose, it is easy to think of cases where the purpose of the acquisition or requisition is neither the one nor the other but a public purpose. Acquisition of sites for the building of hospitals or educational institutions by private benefactors will be a public purpose, though it will not strictly be a State or Union purpose.

When we speak of a State purpose or a Union purpose, we think of duties and obligations cast on the State or the Union to do particular things for the benefit of the public or a section of the public. Cases where the State acquires or requisitions property to facilitate the coming into existence of

utilitarian institutions, or schemes having public welfare at heart, will fall within the third category above- mentioned.

8. With great respect, we are constrained to say that the ejusdem generis rule of construction, which found favour in the court below for reaching the result that the words "any other public purpose" are restricted to a public purpose which is also a purpose of the State, has scarcely any application. Apart from the fact that the rule must be confined within narrow limits, and general or comprehensive words should receive their full and natural meaning unless they are clearly restrictive in their intendment, it is requisite that there must be a distinct genus, which must comprise more than one species, before the rule can be applied.

If the words "any other public purpose" in the Statute in question have been used only to mean a State purpose, they would become mere surplusage; Courts should lean against such a construction as far as possible.

9. Even if it is conceded that the law contemplates only two purposes, namely, State purpose and Union purpose, it is difficult to see how finding accommodation for the staff of a foreign consulate is a Union purpose and not a State purpose. Item 11 in the Union list specifies "diplomatic, consular and trade representation" as one of the subjects within the legislative competence of Parliament, and under article 73 of the Constitution, the executive power of the Union shall extend to all such matters.

It can hardly be said that securing a room for a member of the staff of a foreign consulate amounts to providing for consular representation, and that therefore it is a purpose of the Union for which the State cannot legislate. It was conceded by Mr. Rajinder Narain, Counsel for the Respondent, that there is no duty cast upon the Union to provide accommodation for the consulate staff, and this must be so, when we remember that the routine duties of a Consul in modern times are to protect the interests and promote the commercial affairs of the State which he represents, and that his powers, privileges and immunities are not analogous to those of an ambassador.

The trade and commerce of the State which appoints him with the State in which he is located are his primary concern. The State of Bombay is primarily interested in its own trade and commerce and in the efficient discharge of his duties by the foreign consul functioning within the State.

We are inclined to regard the purpose for which the requisition was made in this case more as a State purpose than as a Union purpose.

10. In any event, as already pointed out, "other public purpose" is a distinct category for which the State of Bombay can legislate, as the acquisition or requisitioning of property except for the purposes of the Union, is within its competence under item 36 of the State List.

11. There is another way of looking at the question involved. An undertaking may have three different facets or aspects, and may serve the purpose of a State, the purpose of the Union and a general public purpose. Even if one may regard the requisition of a room for the accommodation of a member of a Consulate as one appertaining to a Union purpose, it does not necessarily cease to be a State purpose or a general public purpose. In this view also, the requisition in this case must be held to have been validly made."

(emphasis is ours)

In its determination with reference to public purpose (relatable to acquisition proceedings), this Court in the judgment referred to hereinabove, clearly held, that public purpose may be relatable to the Central Government, alternatively, it may be relatable to the State Government. Besides the aforesaid two alternatives, there is also a third alternative, namely, a situation wherein the public purpose is a general public purpose, which is neither exclusively relatable to the Central Government and/or fully relatable to the State Government. The third alternative, would be a situation, wherein the cause in question furthers a common public purpose and is relatable both to a Union and a State cause.

24. It would be relevant to mention, that the judgment rendered by this Court in State of Bombay vs. Ali Gulshan (supra) was brought to our notice by the learned counsel for the appellants. The purpose for doing so, was to enable us to examine the matter in the correct perspective. For this, learned counsel for the appellants pointed out, that the law declared by the above judgment, came to be negated by the Constitution (Seventh Amendment) Act, 1956, which repealed entries 33 and 36 (in lists I and II respectively, of the Seventh Schedule) and substituted entry 42 (in list III, of the Seventh Schedule).

25. Before recording any final determination, we may now refer to the judgments cited at the behest of the appellants. Reference was made to the decision rendered by the Allahabad High Court in Balak & Ors. v. State of Uttar Pradesh & Anr., AIR 1962 Allahabad 208. The facts in the afore-cited judgment are almost similar to the controversy in hand. From the cited judgment, our attention was drawn to the following observations:

> "6. Now I proceed to discuss the merits of the writ petition. The main contention of Mr. S.C. Khare is that the acquisition proceedings are for a Union purpose. It was not open to the State Government to initiate the acquisition proceedings. The impugned notifications mention that land is being acquired for construction of staff quarters in connection with the North Eastern Railway Head-quarters Scheme. This is a Union purpose. But it has been urged for the opposite parties that, the State Government has authority to acquire land for the benefit of the Union.
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> 13. We have to consider whether the 1952 notification can be considered to be an order by the President of India, although the notification purports to have been issued by the Central Government. Under Article 53 of the Constitution, the Executive power of the Union shall be vested in the President and shall be exercised by him either directly Or through officers subordinate to him in accordance with the Constitution. According to Clause (1) of Article 77 of the Constitution, all executive action of the Government of India shall be expressed to be taken in the name of the President. Under this Article, even if action is taken by the. Central Government, the relevant order ought to be issued in the name of the President. I do not find in the Constitution the converse proposition. There is no provision to the effect that, orders to be issued by the President might be issued in the name of the Central Government. We have seen that under Clause (1) of Article 258 of the Constitution, it is the President who can delegate his functions to the State Government. There is nothing in the Constitution to suggest that the Central Government may act on behalf of the President for purposes of Article
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> 258. It is true that, under Article 74 of the Constitution, the President is aided by a Council of Ministers. It was open to the Council of Ministers to advise the President for issuing an order under Article 258 of the Constitution. But ultimately the order had to be issued by the President, or in

the name of the President. In the instant case the 1952 notification was issued by the Central Government, and not by the President. I agree with Mr. Khare that the notification dated 29-3-1952 is not a valid notification delegating powers under Article 258 of the Constitution. The 1952 notification did not empower the State Government to take action under the Act on behalf of the Union Government. In the absence of any such delegation of powers, action in the instant case ought to have been taken by the appropriate Government (the Central Government). It was not open to the State Government to issue notifications under Sections 4 and 6 of the Act on behalf of the Union Government. The two notifications dated 2-3-59 and 16-4-59 with reference to the area of 113.78 acres are invalid. The authorities have tried to dispossess the petitioners on the strength of these notifications. The petitioners are entitled to be restored to possession, in case the authorities have already dispossessed the petitioners. Since the petition partly succeeds, the parties may be directed to bear their own costs.

(emphasis is ours)

It was the vehement contention of the learned counsel for the appellants, that the Allahabad High Court had interpreted the provisions of the Acquisition Act, by appropriately referring to the relevant provisions of the Constitution of India. Learned counsel accordingly submitted, that the legal/constitutional inferences recorded in the cited judgment would clearly demonstrate, that only the Central Government had the jurisdiction, to issue the notification and declaration under Sections 4 and 6 respectively of the Acquisition Act, in the case in hand.

(ii) Reference was also made to the paragraphs extracted below from the decision rendered by the Bombay High Court in Ramdas Thanu Dessai & Ors. v. State of Goa & Ors., 2009 (1) Mh.L.J. 241. Herein also, the controversy before the High Court was similar to the one in hand.

"5. As already seen above, once it is not in dispute that the acquisition is for the South Western Railways for the purpose of construction of railway line and cargo handling terminal at Shelvona, and the entire acquisition cost would be borne by the respondent Nos. 2 and 5, it obviously means that the acquisition is for the Union and, therefore, such acquisition has to be by the Central Government who is the appropriate Government for initiating such action.

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7. In our considered opinion, it is difficult to accept the contention sought to be raised on behalf of the respondent Nos. 1 and

4. The section 4 of the said Act clearly requires the appropriate Government to take initiative for commencement of acquisition proceedings and section 3(ee) specifies as to who would be the appropriate Government bearing in mind the purpose for which the acquisition of land is contemplated. In the case in hand, as already seen above, the acquisition of land specified in the Schedule annexed to the notification is for the purpose of construction of railway line and cargo handling terminal for South Western Railway. The arguments on behalf of the respondent Nos. 1 and 4 relates to the benefits which may arise to the local residents out of construction of such railway line and the terminal and not to the purpose for which the land is sought to be acquired. The resultant benefits which the residents of the affected area in Goa may enjoy is not the purpose for which a particular land is sought to be acquired. If the argument on behalf of the respondent Nos. 1 and 4 is to be accepted, then even the land which is used for laying the railway line and which undisputedly belong to the Union of India would fall in the category of any other purpose. That is not the legislative intent behind defining the term "appropriate Government" under section 3(ee).

8. The appropriate Government under section 4 read with section 3(ee) is that Government which takes decision to acquire the land for its purpose. In the case in hand, once it is not in dispute that pursuant to the proposal by the State Government it was the decision of the Union and its Department of Railways to acquire a particular land for construction of the terminal to be constructed and maintained by the respondent Nos. 2 and 5, it cannot, in the same breath, be said that the acquisition is also for any other purpose. The purpose of acquisition is clearly specified in the notification. Once a particular purpose is specified in the said notification, it cannot be sought to be stated by way of an affidavit that the real purpose is something different from the one disclosed in the notification nor such additional benefits which may accrue on account of acquisition of land to the residents of the locality could be said to be the purpose for which the land is sought to be acquired.

9. It is to be borne in mind that after issuance of notification under section 4, the interested parties are entitled to object to such notification and in that regard the Collector is enjoined to hear the objections and make a report to

the appropriate Government and after considering such reports, the appropriate Government is required to take appropriate decision which should culminate in the form of declaration under section 6. The sections 4, 5, 5A and 6 specifically refers to the appropriate Government and its satisfaction for need to acquire the land. Once it is not in dispute that the proposed acquisition of land is for the purpose of railway terminal, to be built by the respondent Nos. 2 and 5 at their own cost and to be maintained by them, and such terminal is to be used for the activities in relation to the railways i.e., for unloading of ore transported by the railways from Kamataka to Goa, it cannot be said that the land is sought to be acquired for any other purpose. It is to be held that the land is being sought to be acquired for the Union purpose.

10. In spite of the fact that the land is sought to be acquired for the Union, it is undisputed fact that the State Government claims to be the appropriate Government in respect of the acquisition proceedings in question. Obviously, it is without any authority to be the appropriate Government for the purpose of such acquisition. Therefore, the notification and the declaration are to be held as bad in law.

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12. When the statutory provisions comprised under sections 4 and 6 read with section 3(ee) of the said Act clearly provide that in cases of acquisition for the purpose of Union, the appropriate Government would be the Central Government, the exercise of executive power cannot be allowed to transgress the said statutory provisions comprised under the said Act. The petitioners are justified in contending that the executive power is always subservient to the legislative power. It is always subject to legislative provision and has to yield to the legislative power. Mere inclusion of the Entry No. 42 in the concurrent list, which speaks of the principles on which compensation for the property acquired and requisitioned for the purpose of the Union and the State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given, by that itself would not empower the executive to act in contravention of the provisions made in the Central Legislation. It cannot be disputed that the said Act was enacted prior to the independence of India. However, the same was adapted in terms of the Adaptation Order of 1950 and, therefore, is a law made by the Parliament within the meaning of the said expression under the proviso to Article 162 of the Constitution of India.

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18. It is thus clear that in spite of the fact that the acquisition of the land is for the Union's purpose and at the cost of the Central Government, the process of acquisition was sought to be initiated by publication of notification under section 4 of the said Act by the State Government claiming to be the appropriate Government. As the law stands, the acquisition for the Union's purpose cannot be initiated by the State Government unless there is specific delegation of power in that regard and in the case in hand there has been no such delegation. Hence, as rightly submitted on behalf of the petitioners, the notification under section 4 and the declaration under section 6 in relation to the land in question by the State Government is bad in law and is liable to be struck down."

(emphasis is ours)

It was submitted by learned counsel for the appellants, that the issue has been correctly adjudicated even by the Bombay High Court, and that, this Court should endorse the same, while adjudicating the present controversy.

(iii) Reliance was also placed on Messrs. Tinsukia Development Corporation Ltd. v. State of Assam & Anr., AIR 1961 Assam 133, wherein a Full Bench of the Assam High Court held as under:

"3. The submission made on behalf of the petitioner is that as the land was needed for construction of the food-grains godown by the Government of India the purpose was a Union purpose and the Central Government was the appropriate Government. It is not disputed that the two notifications under Sections 4 and 6 were issued on behalf of the State Government. From a perusal of the notification under Section 6 it is also clear that it was the State Government which was satisfied that the land was needed for a public purpose before issuing a declaration under Section 6.

4. The contention on behalf of the State is two-fold in reply to the argument of the counsel for the petitioner. Firstly it is urged that merely because the land is needed for construction of a food- grains godown by the Central Government, it does not necessarily follow that the purpose is a Union purpose. The maintenance of proper supply of food-grains to the inhabitants of this State is as much the responsibility of the State Government as that of

the Central Government. The benefit by the construction of the food-grains godown will be derived by the public of this State and as such it is a public purpose and not a purpose of the Union alone."

It would be relevant to mention, that the submission advanced on behalf of the acquiring Government, was akin to the "third alternative" expressed by the Constitution Bench of this Court in State of Bombay vs. Ali Gulshan (supra).

(iv) Reliance was also placed by the learned counsel for the appellants, on Sudhansu Sekhar Maity & Ors. vs. State of West Bengal & Ors., AIR 1972 Calcutta 320, and our attention was drawn to the following:- "9. In dealing with this point it should first be noted that after the seventh amendment to the Constitution both entries 33 & 36 respectively of the Union list and the State list have now been deleted and entry 42 of the concurrent List has been appropriately amended to cover "acquisition and requisitioning of property". On this amendment acquisition is on the concurrent list and both the Union and the State are equally authorised to legislate on the subject of acquisition irrespective of purpose of such acquisition but subject to the usual limitations otherwise imposed by the Constitution. Thus acquisition irrespective of whether it is for the purpose of the State or the Union being within the legislative competence of the State is also within its executive powers. According to Baneriee. J. in the case of Gadadhar v. State of West Bengal, (1963) 67 Cal WN 460 at p. 470, after such amendment it is wholly inconsequential as to whether the acquisition is made for a purpose of the Union or the State. To quote his words:

"the disclosure that acquisition of land was being made for a purpose which was not the purpose of the Union, in the notification and the declaration, was possibly made under the time worn idea that since the State could legislate in the matter of land acquisition, for its own purpose only, every land acquisition by the State must be justified on that ground. After the Constitution Seventh Amendment Act, 1956 it was not necessary to make such a statement in the notification or the declaration, even if it was at all so necessary at a time when the Constitution had not been so amended".

This statement of the principle by Banerjee, J. can be well supported so long -- as is usually the case -- the State Governments are duly authorised on delegation of powers by the Union Government to acquire lands for a purpose of the Union. Because in the absence of such delegated authority on

the statutory provisions of Sections 4 and 6 of the said Act read with the definition of the term 'appropriate Government' in Section 3(ee). the power of acquisition would otherwise be limited to the State Or the Union Government respectively for purposes of the State or the Union.

10. Now in the present case it appears from the affidavit filed by the respondents Nos. 1 to 4 that by an appropriate notification dated May 14, 1955 issued under Article 258(1) of the Constitution the State Government in West Bengal was duly authorised by the Central Government to acquire land for the purposes of the Union. This factum of delegation is not disputed. If that is so, even if I assume that the purpose of the disputed acquisition is a purpose of the Union it would still be within the powers of the State Government to acquire and the acquisition cannot be struck down as beyond the competence of the State Government. Mr. Sinha, however, contends that in the present case neither the notifications under Section 4 nor the declarations under Section 6 invoke the delegated powers nor are the notifications and declarations issued in appropriate forms. In my view even if that be so, that would not vitiate the notifications or declarations. It would be a mere irregularity not affecting the substance which would not vitiate the acquisition. If the authority has the power for any action taken, the act is competent and non recital or wrong recital of the authority for the action would not make the act incompetent or without jurisdiction. Reference may be made to the decision of the Supreme Court in the case of Lekhraj v. Dy. Custodian, Bombay, AIR 1966 SC 334.

11. That apart, in my view there is great substance in the contention of Mr. Bose that simply because the acquisition is for the purpose of setting up a subsidiary port, the purpose of the acquisition does not necessarily become solely a purpose of the Union. According to Mr. Bose it is a project which would not only be highly beneficial to the general public in this State but would serve public purposes in this State and as such the acquisition would be well supported on the ground that it is for a public purpose. It is clearly so when the acquisition is being made at the expense of the local authority. Mr. Bose rightly relies on the decision of the Supreme Court in the case of State of Bombay v. Ali Gulshan, AIR 1955 SC 810, in contending that there is no merit in the contention that merely because the purpose involves establishment of a port it serves no public purpose other than a purpose of the Union. In my view the following observations of the Supreme Court are clearly instructive, "that there is another way of looking at the question involved. An undertaking may have three different facets or aspects, and

may serve the purpose of a State, the purpose of the Union and a general public purpose. Even if one may regard the requisition of a room for the accommodation of a member of a consulate as one appertaining to a Union purpose, it does not necessarily cease to be a State purpose or a general public purpose". Similar also was the view taken by this Court in the case of (1963) 67 Cal WN 460 (supra). Therefore, following the above view I must hold that when establishment of a subsidiary port or a dock therein would undoubtedly serve at least the general public purpose even if it otherwise involves a purpose of the Union, it would not be beyond the authority of the State Government to acquire lands in exercise of its own powers and irrespective of the powers delegated by the Union Government in this respect. In either view therefore this objection of Mr. Sinha must be overruled."

(emphasis is ours)

According to the learned counsel for the appellants, in the case in hand, the purpose of acquisition was purely relatable to the Railways. And the Railways being exclusively a Union subject (falling under entry 22 in list I, of the Seventh Schedule), the process of acquisition must be deemed to fall in the exclusive executive domain of the Union Government.

26. The second contention advanced at the hands of the learned counsel for the appellants was based on the constitutional right available to the appellants, under Article 300A of the Constitution of India (hereinafter referred to as the 'Constitution'). Article 300A is being extracted hereunder:-

"300A. Persons not to be deprived of property save by authority of law – No person shall be deprived of his property save by authority of law."

Based on the aforesaid constitutional provision, it was emphatically asserted on behalf of the appellants, that an individual could not be deprived of his property except in accordance with law. It was submitted, that even if the lands of the appellants were to be acquired for a public purpose, the same could have been done only by following the procedure established by law. In the absence of following the prescribed procedure, the acquisition itself must be deemed to have been made in violation of the constitutional rights vested in the appellants under Article 300A of the Constitution.

27. In order to support the contention advanced at the hands of the appellants (expressed in the foregoing paragraph), learned counsel for the appellants placed reliance on a number of judgments rendered by this Court. The same are being individually referred to below.

(i) First of all, reliance was placed on the decision rendered by this Court in State of U.P. & Ors. vs. Manohar, (2005) 2 SCC 126. The following observations recorded therein were highlighted, during the course of hearing:-

"6. Having heard the learned counsel for the appellants, we are satisfied that the case projected before the Court by the appellants is utterly untenable and not worthy of emanating from any State which professes the least regard to being a welfare State. When we pointed out to the learned counsel that at this stage at least, the State should be gracious enough to accept its mistake and promptly pay the compensation to the respondent, the State has taken an intractable attitude and persisted in opposing what appears to be a just and reasonable claim of the respondent.

7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300A has been placed in the Constitution, which reads as follows:

"300A. Persons not to be deprived of property save by authority of law - No person shall be deprived of his property save by authority of law."

8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution. In our view, the High Court was somewhat liberal in not imposing exemplary costs on the appellants. We would have perhaps followed suit, but for the intransigence displayed before us."

(ii) Reliance was then placed on the decision rendered by this Court in Hindustan Petroleum Corporation Ltd. vs. Darius Shapur Chennai & Ors., (2005) 7 SCC 627. In order to expound the nature of rights vested in the appellants under Article 300A of the Constitution, reliance was placed on the following observations recorded therein :

"6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300A of the Constitution of India, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

7. Indisputably, the definition of public purpose is of wide amplitude and takes within its sweep the acquisition of land for a corporation owned or controlled by the State, as envisaged under sub- clause (iv) of Clause (f) of Section 3 of the Act. But the same would not mean that the State is the sole judge therefore and no judicial review shall lie. (See Jilubhai Nanbhai Khachar and vs. State of Gujarat, 1995 Supp (1) SCC 596).

8. The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also the purpose and in this regard ordinarily, the jurisdiction of the court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5-A and 6 of the Act must be read conjointly. The court in a case, where there has been total non- compliance or substantial non-compliance of the provisions of Section 5-A of the Act cannot fold its hands and refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be a conclusive evidence. But when the decision making process itself is in question, the power of judicial review can he exercised by the court in the event the order impugned suffers from well-known principles, viz., illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.

9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right."

(emphasis is ours)

(iii) In addition to the aforesaid, learned counsel for the appellants placed reliance on Lachhman Dass vs. Jagat Ram & Ors., (2007) 10 SCC 448, and invited our attention to the following observations made therein:- "16. Despite such notice, the appellant was not impleaded as a party. His right, therefore, to own and possess the suit land could not have been taken away without giving him an opportunity of hearing in a matter of this nature. To hold property is a constitutional right in terms of Article 300A of the Constitution of India. It is also a human right. Right to hold property, therefore, cannot be taken away except in accordance with the provisions of a statute. If a superior right to hold a property is claimed, the procedures therefore must be complied with. The conditions precedent therefore must be satisfied. Even otherwise, the right of pre-emption is a very weak right, although it is a statutory right. The Court, while granting a relief in favour of a pre-emptor, must bear it in mind about the character of the right, vis-a-vis, the constitutional and human right of the owner thereof." (emphasis is ours)

(iv) Finally learned counsel for the appellants, in order to contend, that the acquisition made by the Government of Rajasthan, in the case in hand, was not in conformity with the procedure prescribed by law, placed reliance on Entertainment Network (India) Ltd. vs. Super Cassette Industries Ltd.etc. etc., (2008) 13 SCC 30. From the instant judgment, learned counsel placed reliance on the following observations:-

"118. An owner of a copyright indisputably has a right akin to the right of property. It is also a human right. Now, human rights have started gaining a multifaceted approach. Property rights vis-a- vis individuals are also incorporated within the "multiversity" of human rights. As, for example, any claim of adverse possession has to be read in consonance with human rights. The activist approach of the European Court of Human Rights is quite visible from the judgment of Beaulane Properties Ltd. vs. Palmer, 2005 EWHC 817(Ch.), and J.A. Pye (Oxford) Ltd. vs. Graham, (2002) 3 ALL ER 865.

119. This Court recognized need of incorporating the same principle for invoking the rule of strict construction in such matters in P.T. Munichikkanna Reddy vs. Revamma, AIR 2007 SC 1753, stating:

Adverse possession is a right which comes into play not just because someone loses his right to reclaim the property out of continuous and wilful neglect but also on account of possessor's positive intent to dispossess. Intention to possess can not be substituted for intention to dispossess. Mere possession for howsoever length of time does not result in converting the permissible possession into adverse possession.

120. Further, in Peter Smith vs. Kvaerner Cementation Foundations Ltd., [2006] EWCA Civ 242, the Court allowed the appellant to reopen the case despite a delay of four years as he had been denied the right to which Article 6 of the European Convention on Human Rights ("the Convention") entitled him - to a fair hearing before an independent and impartial tribunal.

121. But the right of property is no longer a fundamental right. It will be subject to reasonable restrictions. In terms of Article 300A of the Constitution, it may be subject to the conditions laid down therein, namely, it may be wholly or in part acquired in public interest and on payment of reasonable compensation."

(emphasis is ours)

Based on the judgments cited above, it was asserted by learned counsel representing the appellants, that in the facts of this case, it stood established, that even though the prescribed procedure, vested the authority of acquisition, with the Union Government, it had unauthorizedly been acquired by the State Government (of Rajasthan).

28. Viewed dispassionately, we are satisfied, that even the second submission advanced by the learned counsel for the appellants, has trappings of the first contention. To succeed on the basis of the second contention, it is critical for the appellants to succeed on the first. Therefore, if the appellants succeed to establish, that acquisition in the present case, could only have been made by the Union Government, they would simultaneously be able to establish, that they had been deprived of their property in violation of Article 300A of the Constitution, i.e., without following the procedure established by law.

29. The third contention advanced at the hands of the appellants was based on Article 73 of the Constitution. It was submitted, that since "Railways" is a union subject (referable to entry 22 in list I, of the Seventh Schedule), only the Union Government, i.e., the Government of India had executive powers to acquire the

land for establishing a zonal office complex and residential quarters for Railway staff for the North Western Railway zone, at Jaipur, in the State of Rajasthan. Article 73 of the Constitution is being extracted hereunder:-

> "73. Extent of executive power of the Union - (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend-
>
> (a) To the matters with respect to which Parliament has power to make laws; and
>
> (b) To the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:
>
> Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.
>
> (2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution."

Based on Article 73 of the Constitution, it was the contention of the learned counsel for the appellants, that "Railways" is a Union subject (referable to entry 22 in list I, of the Seventh Schedule). It was accordingly contended, that Parliament has the exclusive power to make laws relatable to matters pertaining to the "Railways". As such, relying on Article 73, it was submitted, that only the Union Government (the Government of India) could exercise executive power in matters pertaining to the subject "Railways". Having made a reference to the notification dated 19.8.1997 (issued under Section 4 of the Acquisition Act), and the declaration dated 13.1.1999 (issued under Section 6 of the Acquisition Act) it was pointed out, that the land under reference was acquired "… in the public interest for the purpose of Zonal office, North Western Railway by Central Government (Railways Administration)…". It was accordingly submitted, that the matter under reference was relatable to a subject with respect to which, only the Parliament had power to make laws. Therefore, the executive power

relatable to the acquisition under reference, under the mandate of Article 73 of the Constitution, could only have been exercised by the Central Government. In this behalf it was sought to be emphasized, that all the executive power in the instant process of acquisition, was exercised by the Government of Rajasthan. It was accordingly submitted, that all the orders issued by the State Government, including the notification dated 19.8.1997 and the declaration dated 13.1.1999, were without jurisdiction, and as such, void being ultra vires of Article 73 of the Constitution of India.

30. It was also pointed out by the learned counsel for the appellants, that it is open to the President of India to delegate executive functions vested in the Central Government to the State Government. In this behalf, learned counsel for the appellants placed reliance on Article 258 of the Constitution. Article 258 of the Constitution, is being extracted hereunder:

"258. Power of the Union to confer powers, etc, on States in certain cases—

(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Governor of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties."

Based on Article 258 of the Constitution, it was the submission of the learned counsel for the appellants, that the President of India in the facts and circumstances of the instant case, cannot be stated to have ever delegated the aforesaid executive functions of the Union, to the Government of Rajasthan.

The simple submission was, that no such stance had been adopted either by the Union, or by the acquiring State Government. Insofar as the instant aspect of the matter is concerned, learned counsel for the appellants, placed reliance on Section 3(8)(b) of the General Clauses Act, 1897. Section 3(8)(b) aforementioned is extracted hereunder :

"3. Definitions.— In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,-

(1) to (7) ...

(8) "Central Government" shall,--

(a) ...

(b) in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include,--

(i) in relation to functions entrusted under clause (1) of article 258 of the Constitution, to the Government of a State, the State Government acting within the scope of the authority given to it under that clause;

(ii) in relation to the administration of a Part C State before the commencement of the Constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant-Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be; and

(iii) in relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution."

It was the submission of the learned counsel for the appellants, that the onus rested on the Railways, and alternatively on the Government of Rajasthan, to establish that the delegation of power for acquiring the land under reference had actually been ordered by the President of India. It was the submission of the learned counsel for the appellants, that since no such delegation is shown to have been made by the President of India, to the functionaries of the

Government of Rajasthan, it was natural to infer, that no such delegation was ever ordered. Since as submitted by learned counsel, the instant executive function was solely vested in the Central Government, therefore, it could not have been executed on behalf of the Central Government by the Government of Rajasthan. In the instant view of the matter, it was submitted, that the concerned acquisition, by the State Government, was without any authority/sanction of law.

31. In our considered view, even the third submission advanced by the learned counsel for the appellants raises the same foundational plea, as the first two contentions. In order to succeed on the third contention it would be vital (as for the earlier two contentions) for the appellants to establish, that the process of acquisition in this case, could only have been carried out by the Union executive (i.e., the Government of India), whereas, it had unauthorizedly been undertaken by the State Government (i.e., the Government of Rajasthan). In view of the first three submissions, therefore, we shall first of all endeavour to determine, whether the instant acquisition of land, accomplished by the State Government, is sustainable in law.

32. Having given our thoughtful consideration to the matter under consideration, we are of the view, that reliance on entry 33 (of list I of the Seventh Schedule), and on entry 36 (of list II of the Seventh Schedule), and finally on entry 42 (of list III of the Seventh Schedule), is only for the purpose of avoiding and getting around, the real issue. Entries in list I, bring the listed subjects within the legislative competence of the Parliament. Entries in list II demarcate subjects falling within the legislative competence of the State Legislatures. Entries in list III pertain to subjects on which joint legislative competence is vested with the Parliament, as also, the State Legislatures. Needless to mention, that the Constitution vests superiority in enactments made by the Parliament, on subjects enumerated in list III, of the Seventh Schedule (in case of conflict between the legislations enacted by the Parliament and the State Legislatures). Statutory provisions enacted in the manner expressed above, regulate, not only the substance of the legislation, but also modulate the procedure to administer the substance of the legislation.

33. Article 73 of the Constitution vests in the Central Government executive power, the jurisdiction whereof is exactly the same as jurisdiction vested in the Parliament to make laws. The executive power of the Union, therefore, extends over the subjects on which the Parliament has the power to legislate. Arising out of the executive power referred to hereinabove, emerges one fundamental and unambiguous understanding, namely, executive power vested in the Central

Government cannot be exercised in violation of the constitutional provisions referred to above, or as may be ordained by some express legislative enactment. The latter aspect (express legislative enactment), emerges from the proviso under Article 73(1) of the Constitution of India. Therefore, on a subject regulated by legislation, executive power has to be exercised in consonance with the enacted legislation.

34. It is in the background of the conclusions recorded in the aforegoing two paragraphs, that we must understand the scope of executive authority vested in the Central Government under Article 73 of the Constitution. There is no dispute whatsoever, that the subject matter under consideration is regulated by the Acquisition Act. As such, the freedom of executive power vested in the Central Government must be deemed to have been curtailed, so as to be exercised in consonance with the provisions of the Acquisition Act. The preceding proposition is the natural consequence of giving effect to the proviso under Article 73(1) of the Constitution of India. Since the vires of the provisions of the Acquisition Act relied upon by the learned counsel for the appellants have not been assailed, we are inclined to unhesitatingly hold that the procedure contemplated under the Acquisition Act, is liable to be followed in matters pertaining to governmental acquisitions, of private land. In absence of compliance therewith, the process of acquisition made thereunder, would be liable to be set aside. We are of the view, that Sections 4 and 6 lay down mandatory procedural provisions, which require to be followed in letter and spirit, in matters pertaining to acquisition of private lands.

35. For the reasons recorded in the foregoing paragraphs, we are of the view, that reliance on different entries in different lists of the Seventh Schedule, at the behest of the learned counsel for the appellants, may turn out to be wholly inconsequential, in so far as the present controversy is concerned. It needs emphasis, that entries in different lists, have been relied upon only to demarcate the executive domain. To impress upon us, that the jurisdiction to acquire land in the facts of the present case, fell within the exclusive domain of the Central Government, in a very subtle manner, the submission has clearly changed over to a wrong track. Herein the substance of law, as also, the procedure regulating acquisition, flows out of the Acquisition Act. The vires of the Acquisition Act is not under challenge. Therefore, the Acquisition Act, which demarcates the jurisdictional areas between the Union and the States will provide an answer to the issue of jurisdiction canvassed, and not the entries in different lists of the Seventh Schedule of the Constitution of India. More so, because the subject of acquisition is now placed in list III of the Seventh Schedule of the Constitution of India (in entry 42), and as such, the Parliament as also the State Legislatures, have

concurrent jurisdiction in respect thereof. As such, it would be fully justified for Parliament (as it has done through the Acquisition Act), to demonstrate the areas of jurisdiction. All the same, we shall endeavour to record the submissions advanced on behalf of the appellants.

36. While bringing to our notice entry 33 in list I, entry 36 in list II and entry 42 in list III of the Seventh Schedule of the Constitution, it was vehemently pointed out, by learned counsel for the appellants, that the first two of the aforesaid entries came to be omitted by the Constitution (Seventh Amendment) Act, 1956. Simultaneously, by the same amendment, entry 42 was added to List III of the Seventh Schedule. Learned counsel for the appellants therefore submitted, that the earlier entry 33 of list I and entry 36 of list II of the Seventh Schedule must be deemed to have been merged into entry 42 of list III of the Seventh Schedule. It was accordingly the vehement contention of the learned counsel for the appellants, that while determining legislative competence (and the resultant executive jurisdiction) consequent upon the merger of the aforesaid two entries into the freshly amended/substituted entry 42 of list III, it was imperative to keep in mind what the Parliament did away with, and the resultant effect emerging from a collective interpretation of the above three entries, prior to the Constitution (Seventh Amendment) Act, 1956. For the instant reason, it was also sought to be suggested, that the judgment rendered by this Court in State of Bombay v. Ali Gulshan (supra) would not constitute a valid basis for determination of the present controversy. Learned counsel, in this behalf also pointed out, that the judgment in the aforesaid matter was rendered in 1955, i.e. before the Constitutional Amendment in 1956.

37. We shall now endeavour to determine the effect of the submissions advanced at the hands of the learned counsel. Through entry 33 (in list I of the Seventh Schedule), the subject of acquisition of property "... for the purposes of the Union..." was vested in the legislative domain of the Parliament. And through entry 36 (in list II of the Seventh Schedule), the subject of acquisition of property "... except for the purposes of the Union..." was vested in the State Legislatures. Having done away with the aforesaid entries from Lists I and II of the Seventh Schedule, by the Constitution (Seventh Amendment) Act, 1956 (with effect from 1.11.1956), the legislative competence on the subject of acquisition was jointly vested in the Parliament, as well as, the State Legislature through entry 42 (in list III of the Seventh Schedule). Within the scope of entry 42 (in list III of the Seventh Schedule), it was open to the Parliament, as also, the State Legislature to enact legislation on the subject of acquisition. It is, therefore apparent that the exclusive jurisdiction vested in the State Legislature to enact legislation on the subject of

acquisition "...except for the purposes of the Union..." was clearly taken away from the exclusive jurisdiction of the State legislation by the aforestated amendment to the Constitution. In other words, prior to the above amendment, State Legislature had the exclusive jurisdiction to enact law for acquisition of private lands, falling within the territorial jurisdiction of the concerned State. The said jurisdiction was now concurrently shared with the Parliament. The said jurisdiction was invoked by the Parliament when it enacted the Acquisition Act. Therefore, in the ultimate analysis the submission advanced by the learned counsel, would not serve the purpose of the appellants herein, inasmuch as, it is not possible for us to read into entry 42 of list III of the Seventh Schedule, the cumulative effect of entries 31 and 36 (of lists I and II respectively of the Seventh Schedule). Hithertobefore, the jurisdiction of Parliament (and consequently of the Union executive), would extend only to acquisition of land/properties for purposes of the Union. We are satisfied to hold, that consequent upon the Constitution (Seventh Amendment) Act, 1956, the jurisdictional limitations on the subject of acquisition would emerge from a valid legislation made under entry 42 (in list III of the Seventh Schedule). Since the validity of the Acquisition Act has not been assailed by the appellants, we shall accept the same to be a valid legislation enacted under entry 42 (in list III of the Seventh Schedule). We must, therefore, now endeavour to determine the legitimacy of the submissions advanced at the hands of the learned counsel for the appellants, on the jurisdictional question, purely on the basis of the Acquisition Act.

38. In order to determine the validity of the submission advanced at the hands of the learned counsel for the appellants, namely, that the acquisition in the facts and circumstances of the present case, could have been made only by the Central Government, and consequently, the acquisition made by the Government of Rajasthan, was totally without jurisdiction, would depend on the interpretation of Sections 4 and 6 of the Acquisition Act (read along with other provisions of the Acquisition Act, relied upon by the learned counsel for the parties). In this behalf, the submissions advanced on behalf of the appellants, have already been recorded in paragraph 21 above.

39. From the deliberations recorded above, there is no room for any dispute, that the interpretation of the term "appropriate Government" referred to in Sections 4 and 6 of the Acquisition Act would lead to the correct determination of the executive Government competent to acquire the land under reference. Indubitably, the answer to the issue would emerge from the definition of the term 'appropriate Government' in Section 3(ee) of the Acquisition Act, wherein, the expression 'appropriate Government' has been linked to the purpose of acquisition. In such a

contingency, the answer to the query, as to which of the two Governments (Central Government, or the concerned State Government) would satisfy the test of "appropriate Government", one will necessarily have to carefully view the real effect of the words engaged to define the said term in Section 3(ee) of the Acquisition Act. Section 3(ee) aforementioned is being extracted hereunder:

> "3(ee) the expression "appropriate Government" means in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government;"
>
> A perusal of Section 3(ee) of the Acquisition Act, leaves no room for any doubt, that the authority to acquire land has been divided between the Central executive and the State executive. In situations where an acquisition is entirely "…for the purposes of the Union…". Section 3(ee) aforementioned clearly postulates, that the Union executive would have the exclusive jurisdiction to acquire the land. The terminology engaged in Section 3(ee) of the Acquisition Act, for expressing the area of jurisdiction of the State executive (in the matter of acquisition of land), is not analogous or comparable with that engaged while spelling out the jurisdiction of the Union executive. Section 3(ee), it may be noted, does not express, that in matters of acquisition which are entirely for purposes of a State, the jurisdiction would vest with the concerned State executive. Noticeably, the words engaged to express the jurisdiction of the State executive, are extremely wide, so as to accommodate all acquisitions which are not entirely "for purposes of the Union". This intention of the legislature has been recorded by using the words "…in relation to acquisition of land for any other purposes…" (i.e., other than "… for the purpose of the Union…"), "…the State Government".

40. Having had the benefit of understanding the different purposes for which land may be acquired, from the Constitution Bench judgment of this Court in State of Bombay vs. Ali Gulshan (supra), we would unhesitatingly conclude, that the contemplated purposes would definitely be "…three in number, namely, Union purpose, State purpose, and "…a general public purpose…". Our instant determination is based on the fact, that an acquisition may not be exclusively for purposes relatable to the Union, or entirely for purposes relatable to a State. The complex and multifarious public activities which the executive has to cater to may not fall in the exclusive domain of either the Union or the State. In our view, causes with duality of purpose, would also fall in the realm of the third purpose

expressed by the Constitution Bench referred to above as "…a general public purpose …". Whenever the exclusive Union or State barrier is transgressed, the purpose could be described (as in State of Bombay vs. Ali Gulshan (supra)) as "…a general public purpose…". In case of the first contemplated purpose referred to above, the Union executive would have the absolute and unencumbered jurisdiction, as per the definition of the expression "appropriate Government" in Section 3(ee) of the Acquisition Act. For the remaining two purposes, the State executive would have jurisdiction. Therefore, to determine the issue of jurisdiction in the instant case, the first step essentially would be to determine the precise purpose for which the instant acquisition was made. Based on such conclusion, it would be easy to determine the vesting of executive jurisdiction, for acquisition of the land under reference.

41. The instant issue can be examined from another perspective as well. When examined closely, Section 3(ee) of the Acquisition Act, in fact and in substance, incorporates the erstwhile entries 33 and 36 (from Lists I and II respectively, of the Seventh Schedule). For, it may be recalled, that entry 33 (in List I of the Seventh Schedule), had vested the subject of acquisition of property "... for the purposes of the Union..." in the Parliament. Therefore, the executive domain thereof fell in the realm of the Union/Central Government. Exactly in the same manner, under Section 2(ee) of the Acquisition Act, for situations where acquisition is exclusively "… for the purposes of the Union…" the Union executive has been vested with absolute jurisdiction to acquire the land. Likewise, jurisdiction for acquisition of land was vested in the State legislature vide entry 36 (in List II of the Seventh Schedule). The authority of the concerned State legislature extended to acquisitions of land other than "... for the purposes of the Union...". Therefore, the executive domain of all acquisitions other than those for purposes of the Union, fell in the realm of the concerned State Government. In exactly the same manner Section 3(ee) of the Acquisition Act, for all the residuary acquisitions, i.e. situations other than exclusively "…for the purpose of the Union…", have been vested in the realm of the concerned State Government. This is exactly the same position which was contemplated by the erstwhile entries 33 and 36 (from Lists I and II respectively, of the Seventh Schedule). The scope and effect of the erstwhile entries 33 and 36 was determined by a Constitution Bench of this Court in State of Bombay vs. Ali Gulshan (supra), wherein this Court concluded that the acquisition may serve three purposes i.e., the purpose of the Union, the purpose of a State, and thirdly, "…a general public purpose...". Therefore, the logic, the course of thought, the conclusions and the deductions made in the Constitution Bench judgment aforementioned would completely and unqualifiedly be applicable, while interpreting Section 3(ee) of the Acquisition Act. This is for the simple reason, that

the cause and effect of the aforesaid entries (33 of List I, and 36 of List II) have been juxtaposed into the definition of the term "appropriate Government" in Section 3(ee) of the Acquisition Act. Therefore, it is only for the first of the three purposes referred to hereinabove, wherein the term 'appropriate Government' would mean the Central Government. For the other two exigencies/situations, the term 'appropriate Government' would mean the concerned State Government.

42. We are of the view, that the determination on the first issue canvassed at the hands of the learned counsel, would inevitably depend on the purpose for which the land in question came to be acquired. If the purpose of acquisition is exclusively for the Union, then the Union/Central Government will have the exclusive jurisdiction to acquire the land. If the purpose of acquisition is exclusively for a State, then the concerned State Government will have the exclusive jurisdiction to acquire the land. And if the purpose of acquisition is, "a general public purpose" (i.e., a purpose which is neither exclusively relatable to the Central Government and/or fully relatable to the State Government), yet again, the concerned State Government will have the exclusive jurisdiction to acquire the land.

43. We have already referred to a series of communications exchanged between the Union Government, as also, the State Government on the subject of the land required for establishing the zonal office complex and residential quarters for Railway staff (for the North-Western Railway Zone), at Jaipur. From the tenor thereof, we shall venture to determine whether the land in question was being acquired exclusively for the purposes of the Union, or exclusively for the purpose of the State and/or for the third purpose identified above, namely, to serve "…a general public purpose…". For this, we shall first refer to the letters exchanged between the concerned parties. The first available communication on the record of the case dated 15.11.1996, was addressed by the Officer on Special Duty, North-Western Railway, to the Commissioner, Jaipur Development Authority, Jaipur, indicating the availability of 26 bighas of Government land in front of the Getor Jagatpura Railway Station. Even though the aforesaid letter mentions, that the land in question had already been allotted to the Scouts & Guides Organization, yet it was pointed out, that the same could effectively be put to use for setting up the required infrastructure for the North-Western Railway Zone. It was accordingly requested, that the said land may be transferred to the Railways, at an early date. The aforesaid letter leaves no room for any doubt, that what was being sought through the communication dated 15.11.1996 was the transfer of State Government land, to the Railways. The aforesaid position came to be reiterated in another letter dated 15.11.1996. These two communications were then followed by a letter dated

30.12.1996, addressed by Mr. Ram Vilas Paswan, the then Union Minister for Railways, to Mr. Bhairon Singh Shekhawat, the then Chief Minister of the State of Rajasthan, indicating the Union Government's desire to set up the North-Western Railway Zone Complex, at Jaipur. Interestingly, in the aforesaid letter the Railway's request to the State Government was to provide land "free of cost". The basis of seeking the land free of cost, also emerges from the said letter dated 30.12.1996, wherein it was emphasized, that setting up of the Zonal Office would improve train services to and within the State of Rajasthan, and would meet the expectations of public and private entities in that area. In fact, the emphasis in the aforesaid letter was, that such a gesture of the State Government (to provide land free of cost) would go a long way in enabling the Railways to make the Zonal Office functional, at an early date. The instant emphasis makes out, that the State of Rajasthan (on account of transportation facilities, which would become available to public and private entities, having a nexus to the State) would benefit therefrom. Consequent upon the receipt of the aforesaid communication, the Commissioner, Jaipur Development Authority, wrote a letter dated 28.2.1997 to the Secretary, Department of Transport, Government of Rajasthan, for initiating acquisition proceedings in respect of the land identified in villages Bindayaka and Todi Ramjanipura in tehsil Sanganer of district Jaipur. The Deputy Secretary, Department of Transport, Government of Rajasthan, responded to the same vide a letter dated 29.3.1997, addressed to the District Collector, Jaipur, for effectuating the desire expressed. Pursuant to the aforesaid correspondence between the Railways and the functionaries of the Government of Rajasthan, the State Government issued a notification dated 19.8.1997 under Section 4 of the Acquisition Act, depicting its intention to acquire land measuring 4-39 hectares in the revenue estate of village Bindyaka, and 9-91 hectares in village Todi Ramjanipura, tehsil Sanganer, district Jaipur, to establish the North-Western Railway Zone Complex.

44. The correspondence between the Railways and the Government of Rajasthan preceding the notification under Section 4 of the Acquisition Act, is the material correspondence on the basis whereof a finding will have to be recorded, on the issue in hand, one way or the other. The desire for transfer of land belonging to the State Government, and thereafter, the desire to furnish land consequent upon its acquisition "free of cost" to the Railways, leaves no room for any doubt, that the Railways desired the State of Rajasthan to contribute land, for the proposed project. Ordinarily this would be unthinkable, except when the project would directly or indirectly benefit the State as well. Ordinarily, the setting up of a Zonal Office would mean better administration for the Railways establishment. It is difficult to understand how, for the purpose of its own administration, the Railways

could repeatedly implore the Government of Rajasthan, in the first instance to transfer land under State ownership to the Railways, and thereafter, make an alternative request to the Government of Rajasthan, to acquire land and to transfer the same to the Railways free of cost. The only reason which one can infer for such an adjuration, ascertainable from the letters referred to above is, that the residents of the State of Rajasthan would also benefit from the establishment of the said Zonal Office. This issue was impressed upon by the Railways, by asserting that better transportation facilities would become available to the public and private entities having a nexus to the State. And therefore, the Railways considered it appropriate to involve the State Government's participation in the project, in the manner indicated above. The letter addressed by the Union Minister of Railways dated 30.12.1996 is a clear pointer to the above inference. In the said letter, the Union Minister for Railways particularly highlighted the fact that the setting up of the North-Western Railways Zone Complex would improve train services in Rajasthan, which in turn, would benefit the State of Rajasthan. It is, therefore, that in the first instance, transfer of Government land was sought by the Railways. When that did not materialize, the Government was asked to acquire land, and provide it free of cost to the Railways. From the above deliberations, we may record our conclusions as follows. Setting up the North-Western Railway Zonal Complex at Jaipur, would lead to better administration for the Railways, and in that sense it would serve the purpose of the Union. Additionally, it would improve train services in Rajasthan and would accordingly meet the expectations of public and private entities of the area. This would serve the purpose of the State. We would therefore unhesitatingly record, that the situation in hand can be described as one wherein the public purpose is "… a general public purpose…" which is neither exclusively relatable to the Central Government and/or fully relatable to the State Government.

45. In State of Bombay vs. Ali Gulshan (supra) accommodation was required, for housing a staff member of a foreign Consulate in Bombay. In the challenge raised, the primary contention was, that the subject under reference was a Union purpose, and accordingly, the Union Government alone had the jurisdiction in the matter. This submission would naturally emerge from entry 11 (in List I, of the Seventh Schedule), which reads, "Diplomatic, Consular and trade representation". The Bombay High Court, while accepting the challenge had concluded, that there were only two categories for determining the executive Government which had the jurisdiction to acquire land i.e., for a Union purpose the Union/Central Government, and for the purpose of the State, the concerned State Government. The High Court had interpreted the words "any other purpose" by applying the rule of ejusdem generis, as flowing out of the purpose of the State. The Constitution

Bench of this Court while determining the controversy, did not accept the view of the High Court. This Court held, that categories for the purpose of acquisition were three, namely, Union purpose, State purpose, and "…a general public purpose…". This was sought to be explained by observing, that a State purpose or a Union purpose would have a nexus to the duties and obligations cast on the State or the Union, to do particular things for the benefit of the public or a section of the public. Naturally these obligations would be determined on the basis of the scheme of distribution of subjects between the Union and the States in the Seventh Schedule of the Constitution of India. The Union purpose, would constitute the first category. The second category would be, for fulfilling a State purpose. Besides the aforesaid clear demarcation, constituting the first two categories, situations where a State acquires or requisitions property to facilitate the coming into existence of allied objects having public welfare at heart, such like situations would fall within the third category. The third category was described as one which contemplated "…a general public purpose…", i.e., where the purpose is neither exclusively relatable to the Central Government and/or fully relatable to the State Government. In State of Bombay vs. Ali Gulshan (supra) it came to be held, that the acquisition/requisition under reference therein, fell in the third category. The consideration and logic leading to the aforesaid determination was, that trade and commerce is the primary cause of the State which appoints foreign Consulate staff, to the State (in the cited case, the State of Bombay) where he is appointed. The purpose for acquisition/requisition, was accepted as trade and commerce. As such, it was concluded, that the State Government had the jurisdiction to acquire/requisition the land. In the aforesaid understanding of the matter, it is evident that the situation in hand is one akin to the one referred to above where the purpose of acquisition partly falls in the first category i.e., for the benefit of the Union, and partly, falls in the third category i.e., "…a general public purpose. Just like in State of Bombay vs. Ali Gulshan (supra), and for exactly the same reasons, we have no hesitation in concluding, that in the present case as well, the purpose of acquisition would benefit the State generally, as better transportation facilities would meet the expectations of public and private entities having a nexus with the State of Rajasthan. The purpose of the acquisition in hand not being an exclusive Union purpose, and further because, the purpose for acquisition can certainly be described as "…a general public purpose…", the State executive would definitely have the jurisdiction to acquire the land under reference.

46. The submission advanced on behalf of the appellants, against the conclusion drawn above was, that the judgment rendered in State of Bombay vs. Ali Gulshan (supra) could not be applied after the Constitution (Seventh Amendment)

Act, 1956. It was contended that, the basis on which the above judgment was rendered no longer exists, and as such, the same has lost all its relevance. We have already examined this aspect of the matter. We have concluded that Section 2(ee) of the Acquisition Act, reintroduces the three categories under which jurisdiction for acquiring land has to be determined. The same three categories of public purpose, which were deduced from entries 33 and 36 (in lists I and II, respectively of the Seventh Schedule) in State of Bombay vs. Ali Gulshan(supra), also emerge out of an analysis of Section 2(ee) of the Acquisition Act. It is therefore not possible for us to accept, that the Constitution Bench judgment in State of Bombay vs. Ali Gulshanhas lost its relevance. Accordingly, we find no merit in the instant objection raised on behalf of the appellants. For the above reason, it is not possible for us to accept the first contention advanced at the hands of the learned counsel for the appellants. We hereby affirm, that the State Government had the jurisdiction to acquire the land under reference, because it duly satisfied the requirement of the term 'appropriate Government' referred to in Sections 4 and 6 of the Acquisition Act.

47. The second contention advanced at the hands of the learned counsel for the appellants was based on the Constitutional right available to the appellants under Article 300A of the Constitution. The contention advanced at the hands of the learned counsel for the appellants in this behalf was, that the Government of Rajasthan had no jurisdiction to acquire the land in question. Consequently it was contended, that the procedure prescribed by law had not been adhered to. It was asserted that the Central Government alone could have acquired the land in question, since the same was acquired for a purpose which falls in the domain of the Union (the Railways).

48. It was not the contention of the learned counsel for the appellants before this Court, that there had been any other procedural lapse besides the one indicated above. It was not the case of the appellants, that the notifications and declaration contemplated under the provisions of the Acquisition Act were not duly issued. It was also not the case of the appellants, that the land losers were not afforded an opportunity to file objections. Nor was it the case of the appellants, that the objections were not duly considered. No lapse whatsoever had been pointed out depicting any irregularity at the hands of the appropriate authority, either in terms of taking possession of the acquired land, or in terms of determination of the compensation payable. It is, therefore, apparent that in the process of acquisition, no procedural lapse has been pointed out. The only illegality pleaded and canvassed for the annulment of the acquisition proceedings was, that the term 'appropriate Government' used in Sections 4 and 6 of the Acquisition Act was

wrongly assumed, as the Government of Rajasthan. It was submitted, that it ought to have been the Union/Central Government. In the determination rendered by us, in respect of the first contention canvassed on behalf of the appellants, we have already concluded, that in the facts and circumstances of this case, reference to the term 'appropriate Government' in Sections 4 and 6 of the Acquisition Act was rightfully relatable to the Government of Rajasthan. Based on the above conclusion drawn by us, there can be no further room for the appellants to contend, that the instant acquisition process, was not in accordance with law. In the aforesaid view of the matter, we have no hesitation in affirming that while acquiring the land of the appellants, the Government of Rajasthan, has proceeded in due course of law. As such, the appellants cannot be stated to have been deprived of their lands/property, without the authority of law. Accordingly, it is not possible for us to accept even the second contention advanced at the hands of the learned counsel for the appellants, namely, that the acquisition of the appellants' land has violated the appellants' Constitutional right under Article 300A of the Constitution of India.

49. We shall now advert to the third contention advanced at the hands of the learned counsel for the appellants. It was the pointed submission of the learned counsel for the appellants, that the Central Government alone had jurisdiction in the matter of acquisition of land for the Railways. Undoubtedly, the acquisition of the land in the facts and circumstances of the present case was for establishing the North-Western Railway Zone Complex. Despite the aforesaid, we have already concluded hereinabove, that on the subject of acquisition, the only relevant entry in the Seventh Schedule of the Constitution was entry 42 in list III, i.e., the Concurrent List. Besides the aforesaid, no other entry can legitimately be referred to, wherein the acquisition of land (even though for the Railways) is the pointed subject of consideration. There was no challenge to any of the provisions of the Acquisition Act. We have already drawn our conclusions on the basis of the provisions of the Acquisition Act, framed by the Parliament under entry 42 (in list III, of the Seventh Schedule). We have interpreted the relevant provisions of the Acquisition Act, and on the basis thereof have been persuaded to conclude, that the Government of Rajasthan was the competent authority for acquiring the land under reference. In such view of the matter, reliance on Articles 73 or 258 of the Constitution of India, by the learned counsel for the appellants, was clearly misconceived. The answer to the third contention, therefore, clearly emerges from the conclusions drawn by us on the basis of the first contention advanced at the hands of the learned counsel for the appellants. For the above reasons, we find no merit even in the third contention advanced on behalf of the appellants.

50. We shall now deal with the fourth issue canvassed at the hands of the learned counsel for the appellants. The instant issue is unconnected with the previous issues. From the sequence of facts narrated hereinabove, it is apparent that the instant acquisition of land was at the behest of the Railways, i.e., the Union Government. It was pointed out, that on all administrative issues, the functioning of the Central Government is regulated by Rules of Business. In this behalf, our attention was invited to the Government of India (Allocation of Business) Rules, 1961 and the Government of India (Transaction of Business) Rules, 1961. It was the contention of the learned counsel for the appellants, that the aforestated Rules of Business (framed under Article 77 of the Constitution of India) have a binding and mandatory effect. Breach of the Rules of Business, according to the learned counsel for the appellants, would result in vitiation of the entire action. Insofar as the instant case is concerned, it was sought to be canvassed, that the Union of India had breached the Rules of Business. And the said breach, would vitiate the impugned acquisition proceedings. In order to make good the aforesaid submission, learned counsel for the appellants, invited our attention to Rules 3 and 4 of the Government of India (Transaction of Business) Rules, 1961. Rules 3 and 4 aforementioned are being extracted hereunder :

> "3. Disposal of Business by Ministries.- Subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961, shall be disposed of by, or under the general or special directions of, the Minister-in-charge.
>
> 4. Inter-Departmental Consultations.- (1) When the subject of a case concerns more than one department, no decision be taken or order issued until all such departments have concurred, or, failing such concurrence, a decision thereon has been taken by or under the authority of the Cabinet.
>
> Explanation- Every case in which a decision, if taken in one Department, is likely to affect the transaction of business allotted to another department, shall be deemed to be a case the subject of which concerns more than one department.
>
> (2) Unless the case is fully covered by powers to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or special orders made by the Ministry of Finance, no department shall, without the

previous concurrence of the Ministry of Finance, issue any orders which may-

(a) involve any abandonment of revenue or involve any expenditure for which no provision has been made in the appropriation act;

(b) involve any grant of land or assignment of revenue or concession, grant, lease or licence of mineral or forest rights or a right to water power or any easement or privilege in respect of such concession;

(c) relate to the number or grade of posts, or to the strength of a service, or to the pay or allowances of Government servants or to any other conditions of their service having financial implications; or

(d) otherwise have a financial bearing whether involving expenditure or not;

Provided that no orders of the nature specified in clause (c) shall be issued in respect of the Ministry of Finance without the previous concurrence of the Department of Personnel and Training.

(3) The Ministry of Law shall be consulted on-

(a) proposals for legislation;

(b) the making of rules and orders of a general character in the exercise of a statutory power conferred on the Government; and

(c) the preparation of important contracts to be entered into by the Government.

(4) Unless the case is fully covered by a decision or advice previously given by the Department of Personnel and Training that Department shall be consulted on all matters involving-

(a) the determination of the methods of recruitment and conditions of service of general application to Government servants in civil employment; and

(b) the interpretation of the existing orders of general application relating to such recruitment or conditions of service.

(5) Unless the case is fully covered by the instructions issued or advice given by that Ministry, the Ministry of External Affairs shall be consulted on all matters affecting India's external relations."

It was pointed out on the basis of the aforesaid Rules, that if the subject under consideration pertained to business of a singular department, the determination thereof would be rendered "... under the general or special directions of the Minister in-charge...". As against the aforesaid, it was pointed out, that in situations where the subject concerned related to more than one department, no final decision could be taken, and no final order could be passed, unless all the concerned departments were agreeable to the contemplated action. It was, however, pointed out, that in case of non-concurrence of one or the other department, a final decision could still be taken, and a final order could still be passed, but only in consonance with the determination of the Cabinet.

51. Insofar as the present controversy is concerned, it was the vehement contention of the learned counsel for the appellants, that the administrative ministry relevant for the setting up of the North-Western Railway Zonal Headquarter at Jaipur was the Ministry of Railways, whereas, the Department of Land Resources was the concerned department to deal with the matters pertaining to acquisition of land for purposes of the Union. Insofar as the instant aspect of the matter is concerned, learned counsel invited our attention to the Second Schedule under the Government of India (Allocation of Business) Rules, 1961. Therein, under the Head 'B', the Department of Land Resources has been vested with the subject of administration of the provisions of the Acquisition Act, and matters relating to acquisition of land for purposes of the Union. It was the pointed submission of the learned counsel for the appellants, that there was no material on the record of the case to indicate, that in the instant acquisition proceedings, the concurrence of the Department of Land Resources was obtained. As such, it was submitted, that the instant acquisition of land for the Railways was liable to be set aside.

52. In order to further his contention that the Rules of Business have a binding and mandatory character, learned counsel for the appellants placed reliance on a decision rendered by this Court in MRF Limited etc. vs. Manohar Parrikar & Ors., (2010) 11 SCC 374. Our attention was invited to the following observations recorded therein :

"107. Thus from the foregoing, it is clear that a decision to be the decision of the Government must satisfy the requirements of the Business Rules framed

by the State Government under the provisions of Article 166(3) of the Constitution of India. In the case on hand, as have been noticed by us and the High Court, the decisions leading to the notifications do not comply with the requirements of Business Rules framed by the Government of Goa under the provisions of Article 166(3) of the Constitution and the Notifications are the result of the decision taken by the Power Minister at his level. The decision of the individual Minister cannot be treated as the decision of the State Government and the Notifications issued as a result of the decision of the individual Minister which are in violation of the Business Rules are void ab initio and all actions consequent thereto are null and void.

108. The appellants contended before this Court that another Division Bench of the High Court in its earlier judgment of 21.1.1999 had held that the Notification dated 1.8.1996 was clarificatory and that it did not create any extra financial liability on the State Government requiring approval of the Cabinet in compliance with the Business Rules before it was brought into force. In our opinion the said Notification cannot be treated as mere c1arificatory. It is a notification issued purportedly in terms of a Government decision. It was a decision finalized at the level of the Minister of Power alone and was taken in violation of the Rules of Business framed under Article 166(3) of the Constitution of India. The decision cannot be called a government decision as understood under Article 154 of the Constitution, though it may satisfy the requirements of authentication. Nevertheless mere authentication as required under Article 166(2) of the Constitution did not make it a government decision in law nor would it validate a decision which is void ab initio. The validity of the notification will have to be tested with reference to the constitutional provisions and Business rules and not by their form or substance. therefore, this contention of the appellants is liable to be rejected."

No doubt, this Court in MRF Limited's case (supra) has made a passing reference to the effect, that violation of Rules of Business would render all actions taken as void ab initio. In other words, breach of the Rules of Business would render the entire action null and void.

53. We have duly considered the fourth submission advanced by the learned counsel for the appellant. The aforesaid determination in MRF Limited's case (supra), has been rendered without examining the said proposition with reference to Article 77 of the Constitution, as also, any other legislative enactment. We would, therefore, refrain from pointedly examining the issue (in a manner as would

constitute our conclusion a ratio decidendi on the said subject) since we are of the view, that the same does not arise for consideration in the facts and circumstances of this case. The acquisition in the present controversy was made by the Government of Rajasthan, and therefore, there was hardly any justification for the consultation of the Department of Land Resources of the Government of India. It is only if the acquisition had been made by the Railways, the question of consultation with the Department of Land Resources would have arisen. In our view, reliance on the provisions of the Government of India (Allocation of Business) Rules, 1961 and/or the Government of India (Transaction of Business) Rules, 1961 in order to assail the acquisition made in the facts and circumstances of the present case by the Government of Rajasthan, is wholly misconceived.

54. The next contention, serially the fifth contention advanced at the behest of the appellants was, that the choice of the appellants' land for acquisition was vitiated by fraud, and as such, was liable to be set aside. In this behalf, the contention advanced at the hands of the learned counsel for the appellants was, that the action of acquisition would have been legitimate, if the Government of Rajasthan had acquired one block of land for setting up of the North-Western Railway Zone Complex. It was submitted, that the acquisition in question for the purpose of establishing the Zonal Headquarter and staff quarters for North-Western Railways is in two blocks. In this behalf, it is pointed out, that there was motive and extraneous consideration in leaving out of acquisition, the land between the two blocks. It was submitted, that the left out land (between the two blocks acquired) was owned by highly placed bureaucrats and police officers. It was also submitted, that the action of acquiring the appellants' land by consciously leaving out land in the ownership of highly placed influential persons would also be hit by Articles 14 and 15 of the Constitution of India. According to the learned counsel, the impugned acquisition process was also liable to be described as arbitrary and discriminatory.

> (i) On the issue of mala fides and fraud, learned counsel for the appellants placed reliance on the decision rendered in Pratap Singh vs. State of Punjab, (1964) 4 SCR 733 wherein this Court held as under :
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> "8. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by Government of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that it what the appellant has to establish in this case, though this may sometimes be done (See

Edgington v. Fitzmaurice [1855] 29 C.D. 459.. The difficulty is not lessened when one has to establish that a person in the position of a minister apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. We must, however, demur to the suggestion that mala fide in the sense of improper motive should be established only by direct evidence that is that it must be discernible from the order impugned or must be shown from the notings in the file which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts."

(ii) On the subject of classification and equality, learned counsel for the appellants placed reliance onCol. A.S. Iyer vs. V. Balasubramanyam, (1980) 1 SCC 634, and invited our attention to the following conclusions drawn therein :

"57. Sri Govindan Nair, with assertive argument, gave us anxious moments when he pleaded for minimum justice to the civilian elements. He said that the impugned rules were so designed, or did so result in the working, that all civilians, recruit or promotee, who came in with equal expectations like his military analogue, would be so outwitted at all higher levels that promotions, even in long official careers would be hopes that sour into dupes and promises that wither away as teasing illusions. In effect, even if not in intent, if a rule produces indefensible disparities, whatever the specious reasons for engrafting service weightage of the army recruits, we may have had to diagnose the malady of such frustrating inequality. After all, civilian entrants are not expendable commodities, especially when considerable civil developmental undertakings sustain the size of the service. And their contentment through promotional avenues is a relevant factor. The Survey of India is not a civil service 'sold' to the military, stampeded by war psychosis. Nor does the philosophy of Article 14 or Article 16 con-, template de jure classification and de facto easteification in public services based on some meretricious or plausible differentiation, 'Constitutional legalistics can never drown the fundamental theses that, as the thrust of Thomas's case State of Kerala v. N.M. (1976) I LLJ 376 SC and the tail-piece of Triloki Nath Khosa's case State of J & K v. Triloki Nath khoa (1974) I LLJ 121 SC bring out, equality clauses in our constitutional ethic have an equalising message and egalitarian meaning which cannot be subverted' by discovering classification between groups and perpetuating the inferior-superior complex by a neo-doctrine. Judges may interpret, even make viable, but not whittle

down or undo the essence of the Article. This tendency, in an elitist society with a dischard casts mentality, is a disservice to our founding faith, even if judicially sanctified. Subba Rao J. hit the nail on the head when he cautioned in Lachhman Das v. State of Punjab [1963] 2 SCR 353:

'The doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to the said doctrine. Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basic for classification may gradually and imperceptibly deprive the Article of its glorious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality; the fundamental right to equality before the law and the equal protection of the laws may be replaced by the doctrine of classification.'

The quintessence of the constitutional code of equality is brought out also by Bose, J. in Bidi Supply Co. case Bidi Supply Co. v. The Union of India and Ors. [1956] 29 ITR 717 (SC) .

The truth is that it is impossible to be precise, for we are dealing, with intangibles and though the results are clear it is impossible to pin the thought down to any precise analysis. Article 14 sets out, to my mind, an attitude of mind, -a way of life, rather than a precise rule of law. It embodies a general awareness in the consciousness of the people at large of. something that exists and which is very real but which cannot be pinned down to any precise analysis of fact save to say in a given case that it falls this side of the line or that, and because of that decisions on the same point will vary as conditions vary, one conclusion in one part of the country and another somewhere else; one decision today and another tomorrow when the basis of society has altered and the structure of current social thinking is different. It is not the law that alters but the changing conditions of the times and Article 14 narrows down to a question of fact which must be (determined by the highest Judges in the land as each case arises."

(iii) In continuation of the aforesaid, learned counsel also placed reliance on E.P. Royappa vs. State of Tamil Nadu, (1974) 4 SCC 3; Menaka Gandhi v. Union of India, (1978) 1 SCC 248; Ramana Dayaram Shetty vs. International Airport Authority of India, (1979) 3 SCC 489; and Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722.

55. We have examined the last contention advanced at the hands of the learned counsel for the appellants. The instant contention is based on a factual assertions, namely, that the Government of Rajasthan acted arbitrarily and in a discriminatory fashion, by deliberately and intentionally leaving out of the acquisition process, land belonging to highly placed influential persons. Before venturing to examine the instant contention advanced at the behest of the appellants, it is necessary to determine, whether the factual position, at the time of acquisition was, as is being alleged by the appellants. Unfortunately, our determination on the instant aspect of the matter is contrary to the assertions advanced at the hands of the appellants. Insofar as the instant aspect of the matter is concerned, reference may be made to paragraph 11 of the counter affidavit filed on behalf of the State of Rajasthan, wherein, it was asserted as under :

> "It would be relevant to mention that the argument raised about certain lands of IAS & IPA officials being selectively left-out is without any substance. This argument would only suffice if the land belonging to the IAS/IPS officials on the date on of acquisition. This is apart from the fact that certain lands would be left out in acquisition proceedings. It is relevant to mention that no land belongs to any IAS/IPS official on the date of acquisition and any subsequent purchase would not invalidate the acquisition proceedings. Thus, the finding on this aspect does not suffer from any legal infirmity."
>
> The aforesaid factual position has not been denied on behalf of the appellants before this Court. Thus viewed, it is apparent that the land which was left out, and which falls between the two blocks of land acquired, cannot be stated to have been owned by influential bureaucrats or police officers, at the time when the acquisition in question was made. In the aforesaid view of the matter, it is not possible for us to conclude, that the leaving out the land between the two blocks of acquired land, and further that, the choice of acquisition of the appellants' land to the exclusion of the land left out of acquisition, was vitiated for reasons of fraud, mala fides, arbitrariness or discrimination. For the reasons recorded hereinabove, we find no merit even in the last contention advanced at the hands of the learned counsel for the appellants.

56. It is necessary to record herein that the challenge raised at the behest of the appellants, to the acquisition of land made by the Government of Rajasthan, for the Railways, was vehemently opposed by the official respondents for a variety of reasons. More particularly on the grounds of delay and latches, as also, locus standi of the appellants to assail the acquisition proceedings. Had we dealt with the

objections raised by the respondents and found merit therewith, it may not have been necessary for us to examine the merits of the claim raised by the appellants before us. We may acknowledge, that at the first blush, the objections raised by the official respondents did not seem to be bereft of merit. Yet, since the issues canvassed at the hands of the learned counsel for the appellants raised important issues of law, we considered it just and appropriate to deal with them in order to settle the legal proposition canvassed. Having recorded our conclusions on the issues canvassed before us, we are of the view, that it is no longer necessary for us to deal with the objections/submissions canvassed on behalf of the official respondents.

57. For the reasons recorded hereinabove, we find no merit in these appeals. The same are accordingly dismissed.