

SUPREME COURT OF INDIA

Nath Yadav

Vs.

State of West Bengal & Ors.

C.A.No.8438 of 2016

(V.Gopala Gowda and [Arun Mishra,JJ.](#))

31.08.2016

JUDGMENT

V.Gopala Gowda,J.,

SLP (Civil)No.8463 of 2008

1. Leave granted in all the special leave petitions.
2. The present appeals arise out of the impugned final common judgment and order dated 18.01.2008 in W.P. No. 23836 (W) of 2006 and connected petitions, passed by the High Court of Calcutta, wherein the Writ Petitions filed challenging the proceedings of the acquisition of land to an extent of about 1000 acres within the mouzas Gopalnagar, Singherberi, Beraberi, Khaserberi and Bajemelia, P.S. Singur, District Hooghly were dismissed.
3. The relevant facts which are required for us to appreciate the rival legal contentions advanced on behalf of the parties are stated in brief as hereunder:

The State of West Bengal formulated an industrial policy to establish automobile industries in the State to cater to the needs of the people and to solve the problem of unemployment in the State. In pursuance of the same, the respondent, Tata Motors Ltd. (hereinafter referred to as "TML"), entered into discussions with the State Government of West Bengal regarding the infrastructural needs of the project. In a letter dated 19.01.2006 addressed to then Principal Secretary of the Commerce and Industries Department of the Government of West Bengal, TML stated that a team had visited the State and met representatives of the Government. It also thanked the Government for the openness with which the discussions were held and the assurance of its full support on the project, and summarized its requirements for the same. The relevant portion of the proposal is extracted hereunder:

SL. No.	Aspect/ Parameter	Requirement	Remarks
1	Land (including Vendor park)	1000 acres	1) 75% for Tata Motors land 25% for Vendor Park 2) Unconditional flexibility for allotment to vendors 3) Land title on out-right sale basis, or long lease of 99 years transfer of title after the lease period, without condition. 4) Land to be stabilised/graded and given, or the cost to be reduced from the land cost.
2	Land for schooling and township		1) Schooling land to be allotted free of cost or Government to promote establishment of prominent schools in proximity. 2) Land for township to be given at 50% of rate applied for factory land.
3	Power (including vendor park)	100 MVA	Quality of power (50 Hz +/- 3%), availability from 2 sources, regulatory voltage +/- 5%
4	Water (including vendor park)	15000 cu.m	Potable water as per Indian Standards (IS-10500)
5	6 lane road around the boundary of the plant, and 4- lane approach road to the site		Approach road to be available within 3 months from the date of land allotment.

B .Commercial

1	Land Cost	Rs. 2 lakh per acre. Land cost to be paid after 5 years at the rate of 0.1% interest p.a.
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4. The then Principal Secretary to the Government of West Bengal, Commerce & Industries Department, sent the letter dated 24.01.2006, annexing the proposal which TML had sent, to the then Principal Secretary Land and Land Reforms Department, Shri Sukumar Das to

communicate his views to the Commerce and Industries Department. A letter was also sent on the same day to the then Principal Secretary, Finance Department seeking his view on the matter. Further, the 'Record Note of Discussion held between TML and a team from the Government of West Bengal and West Bengal Industrial Development Corporation (hereinafter referred to as the "WBIDC") produced on record, shows that a team from TML met representatives of the Government of West Bengal and WBIDC on 08.03.2006 in Kolkata and on 17.03.2006 in Mumbai. The relevant portion of the record note reads as under:

"TML has shown interest in setting up a "Special Category Project" in West Bengal for manufacture of its new car for a volume of 2, 50, 000 per year on maturity. The West Bengal Government is also keen to attract a "Special Category Project" in line with their Industrial Policy Document."

The record note also states that the project was looking at a direct investment worth Rs.650 crores in the plant and machinery and the IT infrastructure by TML, a direct investment by the company in factory building including utilities such as roads, water line, sewage line, power lines drainage and effluent treatment plants etc. to the tune of Rs. 176 crores, a direct investment by TML in a township of approximately 2000 dwelling units of an average area of 1000/- sq. ft. per dwelling unit with complete municipal facilities such as roads, power line, water line, drainage, parks and other municipal facilities at Rs. 150 crores. The record note further mentions an indirect investment by vendors in the vendor park in plant and machinery valued at Rs. 200 crores and a further indirect investment by vendors in factory building including facilities such as roads, power line, water line, drainage, sewage and other municipal facilities amounting to Rs. 90 crores. The employment potential of this project was assessed at 1,800 employees in direct employment by TML and a further 4,700 employees through vendors and service providers. The estimated project requirement of land, is extracted as under:

"Land

TML factory - 400 acres

Vendor park - 200 acres

Township - 100 acres"

5. At this stage, it is also important to consider the incentive package offered by the State Government to TML. The relevant portion is extracted as under:

" The West Bengal government has offered to TML an incentive package equal to some of the best being offered in some States. The two teams have worked out the following package which may vary downwards or upwards based on the volumes of sales in West Bengal:

1. The State Government will develop the land admeasuring approx. 600 acres and lease it to TML for its own factories as well as for sub-leasing to the vendors for

vendor park needed for the project. The entire land will be leased to TML for 30 years at an annual lease rental of Rs. 10 lakhs. This lease can be renewed for further blocks of 30 years at a negotiated lease rental at the option of TML. On each renewal, the lease rental would not be increased by more than 5 times of the lease rental existing on the date of renewal.

2. The State Government would develop the land and construct the factory building including the facilities such as roads, power line, water line, drainage, sewage, effluent treatment plant, other utilities e.g. Air compressors, standby generators and LPG storage yard, etc. and lease it to the TML at an annual lease rental of Rs. 90 lakhs per annum for 30 years renewable at the option of TML for further blocks of 30 years. At each renewal the lease rental will be negotiated. However, the increase in rental will not be more than 500% at any renewal compared to the rental existing on the date of renewal.

3. The State Government will construct an integrated township of approximately 2000 dwelling units of an average area of 1000 sq. ft. per dwelling unit, including the facilities such as roads, power line, water line, drainage, sewage, effluent treatment plants, parks, schools, training institutes, shopping complex, etc. and lease it to TML on lease for 30 years on annual lease rental of Rs. 25 lakhs. This lease can be renewed in future at the option of TML for further blocks of 30 years and the increase in lease rental at each renewal would not be more than 5 times the lease rental existing on the date of renewal. The township is estimated to cost Rs. 150 crores."

6. The Principal Secretary, Commerce and Industries Department of the Government of West Bengal sent a letter dated 23.03.2006 to the Deputy General Manager, Government Affairs and Collaborations of TML with referenceto the letter dated 19.01.2006 and the record notes of the subsequent discussions between the Government of West Bengal and TML on the subject signed on 17.03.2006, approving the proposal as under:

"...from TML to set up a plant on 600 acres of land near Kharagpur to manufacture a new car addressing the lower end of the market, with annual capacity of 2,50,000 units on maturity the targeted date of commencement of commercial production being the year 2008."

By way of letter dated 29.03.2006, the then Chief Minister of West Bengal wrote to the then Chairman of TML regarding the project. There was some discussion regarding the location of the plant, the relevant portion of which is extracted from the file as under:

"During our discussion today, you had mentioned the allocation close to Kolkata may be considered. As you are undoubtedly aware, land around Kolkata is difficult to come by and the cost Of such land is also very high. Also, land has to be suitable for industry. We had to keep these aspects in view while selecting a location for the TML plant. We had at first proposed location of this project at Guptamoni, which is about

25km west of Kharagpur towards Jamshedpur on National Highway 6. Thereafter, based on the suggestion given by Shri Ravi Kant during his meeting with Shri Nirupam Sen, we have now selected a site right next to Kharagpur town, on National Highway

6 The distance to Kharagpur from Kolkata can now be covered in approximately 90 minutes. Haldia Port is at a distance of 100 kms from this location, while Jamshedpur is about 2 hours away. We now await a visit from Shri Ravi Kant for his approval of the proposed location. I can assure you that this is one of the best locations in West Bengal for locating your plant. I look forward to the final approval from the Board of Directors of TML so that we can immediately start taking all the necessary steps."

(emphasis laid by this Court)

7. TML subsequently informed the representatives of the State Government of West Bengal that they would like to be shown the site at Singur again for their technical team to reconfirm the suitability of the site. Consequently the said site was again shown to the representatives of TML on 05.05.2006. They confirmed that this is the site which would be ideally suited for the proposed small car project. The total land area was 1053 acres for the small car project and 200 acres in Telipukur mouza for the township. The Draft Note for Cabinet Memo mentions the mouzas for which the WBIDC had proposed for acquisition of land as well. The Principal Secretary, Commerce and Industries Department drafted the Cabinet Memo No. 2995/PrS/C&I dated 30.05.2006 titled as under:

"Proposal for acquisition of land measuring 1053 acres for small car project of Tata Motors at Singur, Hooghly and 200 acres in Telipukur in Singur P.S. District-Hooghly for Housing and related amenities to be developed by Tata Housing Development Co. Ltd." in the as well. The Cabinet Memo mentions the investment project and the shift in the proposed site The relevant portion is extracted hereunder:

"..The Tata Motors Co. Ltd. (TML) have decided to set up their Small Car Project in West Bengal. For this purpose for the last several months, they have scouted for various sites around Kolkata and have finally chosen a site in Singur P.S. in the Hooghly district due to its locational advantage. The site chosen will also cater to the requirement of the vendors of the Company who will be located in the Vendors' Park within the Tata Motors Factory site. The total investment including that by vendors is expected to be about Rs.1000crores. The Plant will generate substantial direct and indirect employment, and will also create a number of ancillary units, which also generate local employment.

1. The State Government had initially proposed location of this plant in Kharagpur. TML have informed that this will be flagship project, providing very high visibility to West Bengal as an investment destination. They also need very good connectivity and proximity to airport, as well as quality urban and physical infrastructure. Taking all

these factors into account, TML, after seeing a number of sites in Howrah, Hooghly, Paschim Medinipur and Purba Medinipur, finally selected a site in Singur Block.

2. West Bengal Industrial Development Corporation Ltd. (WBIDC) now proposes to acquired 1053 acres of land for the said Small Car Project of Tata Motors Co. Ltd. in following mouzas under Singur P.S. in Hooghly district:

Mouza J.L. No	
Gopal Nagar	13
Singherberi	10
Beraberi	05
Khaserberi	11
Bajemelia	12

3. The Tata Housing Company Ltd. has proposed To set up housing and related infrastructure at Telipukur under Singur P.S. in Hooghly district comprising of 200 acres to cater to the Housing and Social infrastructure requirements of the proposed Small Car Project of the Tata Motors Co. Ltd. at Singur, which is not far away from the proposed project site. WBIDC, therefore, proposes to acquire 200 acres of land at Telipukur, Singur P.S. in Hooghly district for the purpose.

4. The identification of lands involved in this acquisition proposal has been made in such a manner that existing settlements/ habitations are avoided. Where isolated homesteads are involved, suitable rehabilitation in the form of providing land/house will be taken up. Detailed land survey and plot identification will be carried out after Cabinet accords approval to the proposal. Efforts will also be made to avoid/minimize intensively cropped lands. This has the approval of the Chief Minister. Cabinet may kindly approve the proposed acquisition of 1253 (1053+200) acres of land as proposed at para 3 and 4 above."

(emphasis laid by this Court)

8. Pursuant to the approval of the said decision of the Cabinet by the Chief Minister dated 05.06.2006, the notification under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as the "L.A. Act") was published in the Calcutta Gazette Extraordinary dated 21.07.2006, the relevant portion of which reads as under:

"Whereas, it appears to the Governor that land as mentioned in schedule below is likely to be needed to be taken by Government / Government Undertaking / Development Authorities, at the public expense for a public purpose, viz., employment generation and socio economic development of the area by setting up TATA Small Car Project in the Mouza Beraberi, jurisdiction list No. 5, P.S. Singur, District Hooghly; it is hereby notified that for the above purpose an area of land comprising RS/LR plots as detailed below and measuring more or less, 72.03 acres, as specified below within the aforesaid Mouza "

(emphasis laid by this Court)

A perusal of the said notification makes it clear that it does not specifically mention that the land in question is being acquired in favour of WBIDC. It merely states that the land in question might be needed for Government / Government Undertaking/Development Authorities. Proposal numbers 3 and 4 of Cabinet Memo, referred to supra, approved by the Chief Minister make it clear that acquisition of land comprising of 1053 acres is needed for the Small Car Project of TML and 200 acres of land is needed to cater to the housing and social infrastructure needs of the project.

9. Section 4 of the L.A. Act reads as under:

" (1) Whenever it appears to the appropriate Government the 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 the publication of the notification."

10. The Act, under the provision of Section 5-A further provides that after the notification, the objections, if any, may be submitted in writing to the Collector. The Collector, after the receipt of such objections, needs to give an opportunity of being heard to the person so objecting. The Collector is then required to conduct an inquiry and submit a report in that respect to the State Government for its consideration. In the instant case, five objection petitions were received from the land owners/cultivators within 30 days after publication of notification under Section 4 of the L.A. Act. One objector applied for exemption of his land from acquisition as he intended to set up a petrol pump from it. Another applied for exemption of the land from acquisition on the ground that they are running a number of agro-based industries like cold storage, factory and fisheries covering a large area of land providing employment to a considerable number of persons. The Land Acquisition Collector submitted the report dated 31.08.2006 to the State Government. In the report, the Land Acquisition Collector concluded that WBIDC intends to acquire the land for generating employment and for socio-economic development of the area by setting up a factory for the 'Small Car Project' of TML at Singur. Being such a large scale project, it was bound to create immense job opportunities for the local youth, both directly and indirectly. The Land Acquisition Collector, thus, concluded that the acquisition of the land in question was indeed for public purpose. As far as certain other objectors were concerned, the Land Acquisition Collector observed that the objectors did not appear before him to justify their objections to the proposed acquisition of lands, despite the factum of hearing before the Land Acquisition Collector being widely advertised, including by way of announcement in two local daily newspapers. The Land Acquisition Collector concluded that it appears that the objectors are no more interested to proceed further in the proceedings with their objections. Therefore, he concluded that those objections may be ignored in the greater interest of the public and the

State and submitted his reports to the State Government dated 29.08.2006. Pursuant to the report of the Land Acquisition Collector, the State Government issued notification under Section 6 of the L.A. Act published in the official gazette dated 30.08.2006, the relevant portion of which reads as under:

"Whereas the appropriate Government is satisfied, after considering the report sent by the Collector u/s 5-A (2), the land mentioned in the schedule given below is needed by the State Government/ Government Undertaking/ Development Authorities, at the public expense for a public purpose, viz., employment generation and socio economic development of the area by setting up of TATA Small Car Project "

11. The Land Acquisition Collector subsequently made award of compensation on 25.09.2006. WBIDC then took possession of the land in question, the extent of which was 997 acres. By its letter dated 20.12.2006, WBIDC asked TML to take "permissive possession of 950 acres of land pending finalization of the lease deed and lease terms and conditions." The formal lease deed was executed on 15.03.2007. Subsequently, the acquisition proceedings were challenged before the High Court of Calcutta by way of Writ Petitions. By common judgment and order dated 18.01.2008, a Division Bench of the Calcutta High Court, dismissed the Writ Petitions, and upheld the acquisition of land, holding the same to be in the interest of the public and for public purpose. The same was challenged by way of Special Leave Petition before this Court being SLP (Civil) No. 8463 of 2008 and other connected SLPs as clearly mentioned in the cause title of this judgment.

12. Even as the above said cases were pending before this Court, the State Government of West Bengal and TML went ahead with the development of the land and setting up of the factory for the 'Small Car Project'. It was, however, at around that time that the local population started protesting against the acquisition of the land and setting up of the factory. Numerous incidents of blockade, protests and violence were reported in the print and electronic media. By letter dated 10.11.2008 addressed to the Director General of Police, West Bengal, TML informed that it is suspending operations as the circumstances were no longer conducive for them to work in a peaceful manner. TML started removing the equipments, machines and other materials from the site from 10.11.2008 onwards. The said plant was then relocated to the State of Gujarat. The new Government of West Bengal enacted a legislation on 20.06.2011 titled the 'Singur Land Rehabilitation and Development Act, 2011' (hereinafter referred to as the "Singur Act, 2011") for taking over the land covered by the lease granted in favour of TML. TML challenged the constitutional validity of the said Act by way of Writ Petition before a single Judge of the Calcutta High Court. By judgment and order dated 28.09.2011 the learned single Judge upheld the validity of the said Act. The correctness of the said decision was challenged by way of appeals before a Division Bench of the High Court. By its common judgment and order dated 22.06.2012, the Division Bench allowed the appeals and struck down Sections 2, 4(3), 5 and 6 of the Singur Act, 2011 as unconstitutional as they were in direct conflict with the provisions of the L.A. Act and hence, repugnant to the said Act. It was further held that the entire Singur Act, 2011 itself is void and unconstitutional as the same had not received assent from the President of India. Hence, the present appeals.

13. By way of order dated 11.05.2016, this Court has de-tagged the appeals arising out of SLP (C) No. 23843 of 2012, SLP (C) No. 24269 of 2012 and SLP (C) No. 1881-1911 of 2013, as they deal with the constitutional validity of the Singur Act, 2011. The scope of the present appeals is only restricted to deciding the validity of the acquisition of land and the compensation awarded thereafter in favour of the land losers.

14. Mr. Colin Gonsalves, the learned senior counsel appearing on behalf of the appellant in the appeal arising out of SLP (C) No. 12724 of 2008 submits that admittedly, TML approached WBIDC to develop a small car manufacturing unit within the State of West Bengal. The learned senior counsel further contends that a perusal of the documents on record, being the Cabinet Memo as well as the letters exchanged between TML and the West Bengal State Government would clearly show that the site of the project was chosen jointly by the State Government and TML as the best possible site for the project which was to be implemented by establishing the factory in consultation with each other. The land in question was acquired by WBIDC at the behest of TML. The learned senior counsel contends that such an acquisition would be hit by the provisions of Part VII of the L.A. Act, the heading of which is "Acquisition of land for companies". It is submitted that the provisions of the said part were not followed in the instant case, though the same are mandatory in nature. The learned senior counsel draws our attention to Section 39 of the L.A. Act which reads as under:

"39.Previous consent of appropriate Government and execution of agreement necessary:- The provisions of section 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned"

It is contended that the Agreement in terms of Section 39 of the L.A. Act has not been published in the official gazette.

15. The learned senior counsel places reliance on the decision of this Court in the case of *Devender Pal Singh v. State of Punjab*¹, wherein this Court has held as under:

"16. When a request is made by any wing of the State or a Government company for acquisition of land for a public purpose, different procedures are adopted. Where, however, an application is filed for acquisition of land at the instance of a "company", the procedures to be adopted therefore are laid down in Part VII of the Act. Although it may not be decisive but the conduct of the State as to how it intended to deal with such a requisition, is a relevant factor. The action of the State provides for an important condition to consider as to whether The purpose where for a company requests it for acquisition of land is a public purpose and/or which could be made at public expenses either as a whole or in part, evidently provisions laid down in Part II shall be resorted to. On the other hand, if the State forms an opinion that the acquisition of land at the instance of the company may not be for public purpose or, therefore the expenses to be incurred therefore either in whole or in part shall not be

borne by the State, the procedures laid down in Part VII thereof have to be resorted to. The procedures laid down under Part VII of the Act are exhaustive. Rules have been framed prescribing the mode and manner in which the State vis-a-vis the company should proceed. It provides for previous consent of the Appropriate Government, execution of the agreement, previous inquiry before a consent is accorded, publication of the agreement, restriction on transfer, etc. It also provides for statutory injunction that no land shall be acquired except for the purpose contained in Clause (a) of Sub-section (1) Section 40 of The Act for a private company which is not a Government company. For the purpose of Section 44B of the Act, no distinction is made between a private company and a public limited company."

The learned senior counsel contends that the abovementioned case makes it clear that land can be acquired either for a company, or for a public purpose, but not for both.

16. The learned senior counsel further places reliance on the decision of this Court in the case of *Amarnath Ashram v. Governor of U.P. & Ors.*², wherein this Court held as under:

"Admittedly, in the present case the entire cost of acquisition is to be borne by the appellant society and, therefore, it is an acquisition for a company and not for a public purpose. That is also borne out by the notification issued Under Section 6 of the Act which states "that the land mentioned in the schedule below is needed for the construction of play-ground for students of Amar Nath Vidya Ashram (public school). Mathura in district Mathura by the Amar Nath Ashram Trust, Mathura". Therefore, simply because in the notification issued Under Section 4 of the Act it was stated that the land was needed for a public purpose, namely, for a play-ground for students of Amar Nath Vidya Ashram (public school), Mathura, it cannot be said that the acquisition is for a public purpose and not under Chapter VII for the appellant-society in view of subsequent events and the declaration made Under Section 6. The learned counsel for the State also relied upon the decision of this Court in *Srinivasa Cooperative House Building Society Ltd. v. Madam Gurumurthy Sastry*², wherein this Court has held that though there is "no provision in the Act to say that when a land is required for a company, it may also be for a public purpose. However, even the acquisition for a company, unless utilisation of the land so acquired is integrally connected with public use, resort to the compulsory acquisition under Chapter VII cannot be had". It was submitted on the basis of this observation that even in case of an acquisition for a company an element of public purpose has to be there and if for that reason it was believed by the Government that it was necessary for it to make substantial contribution from public revenue so as to avoid the charge of colourable exercise of powers, the decision of the Government to withdraw from the acquisition cannot be said to be arbitrary or illegal. The aforesaid observation was made by this Court in the context of requirement of Section 40 of the Act and they cannot be construed to mean that no land cannot be acquired by the State Government without making substantial contribution towards the cost of acquisition. We cannot read something more in the said observation than what they were intended to convey.

The provisions of part VII and particularly the provisions regarding payment of the entire costs of the acquisition would otherwise become redundant."

Further reliance has been placed by him on the case of R.L. Arora , wherein this Court held as under:

"Therefore, though the words "public purpose" in Sections 4 and 6 have the same meaning, they have to be read in the restricted sense in accordance with s. 40 when the acquisition is for a company under s. 6. In one case, the notification under s. 6 will say that the acquisition is for a public purpose, in the other case the notification will say that it is for a company. The proviso to s. 6(1) shows that where the acquisition is for a public purpose, the compensation has to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. Where however the acquisition is either for a company, the compensation would be paid wholly by the company. Though therefore this distinction is there where the acquisition is either for a public purpose or for a company, there is not a complete dichotomy between acquisitions for the two purposes and it cannot be maintained that where the acquisition is primarily for a company it must always be preceded by action under Part VII and compensation must always be paid wholly by the company. A third class of cases is possible where the acquisition may be primarily for a company but it may also be at the same time for a public purpose and the whole or part of compensation may be paid out of public revenues or some fund controlled or managed by a local authority. In such a case though the acquisition may look as if it is primarily for a company it will be covered by that part of s. 6 which lays down that acquisition may be made for a public purpose if the whole or part of the compensation is to be paid out of the public revenues or some fund controlled or managed by a local authority."

The learned senior counsel contends that the mere mention of public purpose in the notifications, does not in fact make the acquisition one for a public purpose, when the acquisition of lands was made in favour of TML. To make the acquisition one for public purpose, it must be directly useful to the public, and the benefit must not be merely incidental in nature. The learned senior counsel places reliance on the Statement of Objects and Reasons of the Amendment Act 68 of 1984 to the L.A. Act, which states thus:

" With the enormous expansion of the State ' s role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialisation, building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often Depriving him of his means of Livelihood . Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in

view the sacrifice they have to make for the larger interest of the community. The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them.

2. It is necessary, therefore, to restructure the legislative framework for acquisition of land so that it is more adequately informed by this objective of serving the interests of community in harmony with the rights of the individual. Keeping the above objects in view and considering the recommendations of the Law Commission, the Land Acquisition Review Committee as well as the State Governments, institutions and individuals, proposals for amendment to the Land Acquisition Act, 1894, were formulated and a Bill for this purpose was introduced in the Lok Sabha on the 30th April, 1982. The same has not been passed by either House of Parliament. Since the introduction of the Bill, various other proposals for amendment of the Act have been received and they have also been considered in consultation with State Governments and other agencies. It is now proposed to include all these proposals in a fresh Bill after withdrawing the pending Bill. The main proposals for amendment are as follows:-

i) The definition of public purpose as contained in the Act is proposed to be amended so as to include a longer illustrative list retaining, at the same time, the inclusive character of the definition.

(ii) Acquisition of land for non-Government companies under the Act will hence forth be made in pursuance of Part VII of the Act in all cases."

(emphasis laid by this Court)

17. Mr. Kalyan Banerjee, the learned senior counsel appearing on behalf of the some of the appellants, who are cultivators, in the appeal arising out of SLP (C) No. 11830 of 2008 and SLP (C) No. 11783 of 2008 contends that the acquisition of lands in the instant case was not for a public purpose, but for a company, (TML) under the guise of public purpose. The lands were acquired by WBIDC at the specific instance of TML, as becomes clear from a perusal of the notifications issued under Sections 4 and 6 of the L.A. Act, the relevant portions of which have been extracted supra.

18. The learned senior counsel further draws our attention to Section 6 of the L.A. Act, which reads as under:

"6. Declaration that land is required for a public purpose. –

(1) Subject to the provision of Part VII of this Act, [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 authorized to certify its orders [and 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 (I) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)]; 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, wholly or partly out of public revenues or some fund controlled or managed by a local authority.

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."

The learned senior counsel contends that as per Section 6 of the L.A. Act, the deposit of money is the deposit of public revenue is to be examined in the light of Explanation-2. Explanation-2 to Section 6, which has been added by way of the Land Acquisition (Amendment) Act 68 of 1984 provides that no declaration under Section 6 shall be made unless the compensation to be awarded for the lands in question is paid by a Company, wholly or partly out of public revenues or some fund controlled or managed by a local authority. The learned senior counsel further contends that WBIDC cannot be said to be 'local authority'. A local authority must have representative character. This means that it must comprise of elected members and must be under the control of the Government with the control and management of a municipal or local fund. This aspect of the matter has been considered by this Court in a number of cases wherein it was held that a statutory corporation or a company formed by a State Government or Central Government cannot be construed as a local authority. The learned senior counsel places reliance on the Constitution Bench decision of this Court in the case of *Valjibhai Muljibhai Soneji v. State of Bombay & Ors*⁴, wherein on the question of whether or not the State Road Transport Corporation was a local authority for the purpose of the L.A. Act, it was held as under:

"The expression "local authority" is not defined in the Land Acquisition Act but is defined in s. 3(31) of the General Clauses Act, 1897, as follows:

"' local authority' shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund :"

The definitions given in the General Clauses Act, 1897, govern all Central Acts and Regulations made after the commencement of the Act. No doubt, this Act was enacted later in point of time than the Land Acquisition Act; but this Act was a consolidating and amending Act and a definition given therein of the expression "local authority" is the same as that contained in the earlier Acts of 1868 and 1887. The definition given ins. 3(31) will, therefore, hold good for construing the

expression "local authority" occurring in the Land Acquisition Act. We have already quoted the definition. It will be clear from the definition that unless it is shown that the State Transport Corporation is an 'authority' and is legally entitled to or entrusted by the Government with control or management of a local fund it cannot be regarded as a local authority. No material has been placed before us from which it could be deduced that the funds of the Corporation can be regarded as local funds."

The learned senior counsel further places reliance on The decision of this Court in the case of *Calcutta State Road Transport Corporation v. Commissioner of Income Tax, West Bengal*⁵, wherein it was held as under:

"The expression "local authority" is not defined in the Income Tax Act. Its definition is, however, contained in the General Clauses Act in Clause (31) of Section 3. It reads:

'Local authority' shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

The contention of Sri Ray is that inasmuch as the assessee is entrusted by the Government with the control or management of a "local fund", it is a local authority within the meaning of the said definition. Sri Ray placed strong reliance upon the judgement of this Court in *Union of India and Ors. v. Shri R.C. Jain and Ors.* The question in the said decision was whether the Delhi Development Authority (D.D.A.) constituted under the Delhi Development Act, 1957 is a "local authority". The question had arisen under the provisions of the Payment of Bonus Act. Chinnappa Reddy, J., speaking for the Bench, laid down the following test for determining whether a particular body is a "local authority" within the meaning of Section 3(31) of the General Clauses Act:

"An authority, in order to be a local authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board or Body of Port Commissioners, but possessing one essential feature, viz., that it is legally entitled to or entrusted by the government with, the control and management of a municipal or local fund." The learned Judge elaborated the said test saying that to be characterised as a "local authority", the authority must have separate legal existence as a corporate body, it must not be a mere government agency but must be legally independent entity, it must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. It must also enjoy a certain degree of autonomy either complete or partial, must be entrusted by statute with such government functions and duties as are usually entrusted to Municipal Bodies such as those connected with providing amenities to the inhabitants of the locality like health and education, water and sewerage, town planning and development, roads, markets,

transportation, social welfare services etc. Finally it was observed-such body must have the power to raise funds for furtherance of its activities and fulfillment of its objects by levying taxes, rates, charges or fees."

(emphasis laid by this Court)

The learned senior counsel further places reliance on The decision of this Court in the case of *S. Sundaram Pillai & Ors. v. R. Pattabiraman & Ors.*⁶ to contend That explanation cannot extend the scope of the proviso. It was held by this Court as under:

"42. In *Hiralal Rattanlal etc. v. State of U.P. and Anr. etc.* this Court made the following observations: Ordinarily, a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section.

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

- 1) qualifying or excepting certain provisions from the main enactment;
- 2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
- 3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
- 4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

44. These seem to be by and large the main purport and parameters of a proviso."

19. The learned senior counsel contends that explanation is only relatable to the main provision and not the proviso. The learned senior counsel thus, reiterates that even where the acquisition of land is for a corporation, provisions of Part VII of the L.A. Act must be complied with.

20. Mr. Prashant Bhushan, the learned counsel appearing on behalf of the appellant - Association of Democratic Rights in the appeal arising out of SLP (c) No. CC 13645 of 2008 submits that acquisition for a public purpose is made under Part II of the L.A. Act, whereas acquisition for a company is made under Part VII of the L.A. Act. The procedure under Part

VII of the L.A. Act is mandatory and strict compliance of the same is required for the state to exercise its power of eminent domain to acquire the lands in favour of a Company. It is submitted that in the instant case, the lands were acquired for a particular company, TML, at the instance of the said company and the exact location and site of the land was also identified by the said company. Even the notifications issued under Sections 4 and 6 of the L.A. Act clearly state that the land was being acquired for the Tata Motor's 'Small Car Project'.

21. The learned counsel draws our attention to Rule 4 of the Land Acquisition (Companies) Rules, 1963 framed under Section 55 of the L.A. Act of which reads as under:

"Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings- (1) Whenever a company makes in application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters namely :-

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

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

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

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

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

(vi) where the land proposed to be acquired is good agricultural land that no alternative suitable site can be found so as to avoid acquisition of that land " It is submitted that Rule 4 is mandatory in nature and that unless the directions enjoined by Rule 4 are complied with, the notification under Section 6 of the L.A. Act will be invalid. The learned counsel submits that the aforesaid Rule came up for the consideration before this Court in the case of Devender Singh (supra), wherein it was held as under:

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

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

46. In *State of Gujarat and Anr. v. Patel Chaturbhai Narsibhai and Ors.*, this Court held:

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

47. In *General Government Servants Cooperative Housing Society Ltd., Agra etc. v. Sh. Wahab Uddin and Ors. etc.*, this Court held:

13. Sub-rule (1) requires the Government to direct the Collector to submit a report to it on the matters enumerated in Clauses (i) to (vi) of the Sub-rule (1) which is for the benefit of the Company. The purpose is to avoid acquisition of land not suitable for a Company. Clause (ii) of Sub-rule (1) requires that the Company has to make all reasonable efforts to get such lands by negotiation with the person interested therein on payment of reasonable prices and that such efforts have failed. The purpose of Clause (ii) seems to be to avoid unnecessary land acquisition proceedings and payment of exorbitant prices. The purpose of Clauses (iii), (iv) and (v) is obvious. The purpose of Clause (vi) is to avoid acquisition of good agricultural land, when other alternative land is available for the purpose. Sub-rule 2 of Rule 4 requires the Collector to give reasonable opportunity to the Company so that the Collector may hold an inquiry into the matters referred in Sub-rule (1). The Collector has to comply with Clauses (i),

(ii) and (iii) of Sub-rule 2 during the course of the inquiry under Sub-rule (1). The Collector under Sub-rule 3 then has to send a copy of his report of the inquiry to the appropriate Government and a copy of the report has to be forwarded by the Government to the Land Acquisition Committee constituted under Rule 3 for the purpose of advising the Government in relation to acquisition of land under Part VII of the Act, the duty of the Committee being to advise the Government on all matters

relating to or arising out of acquisition of land under Part VII of the Act (Sub-rule (5) of Rule 3). No declaration shall be made by the appropriate Government under Section 6 of the Act unless the Committee has been consulted by the Government and has considered the report submitted by the Collector under Section 5A of the Act. In addition, under Clause (ii) of Sub-rule (4) of Rule 4, the Company has to execute an agreement under Section 41 of the Act. The above consideration shows that Rule 4 is mandatory; its compliance is no idle formality, unless the directions enjoined by Rule 4 are complied with, the notification under Section 6 will be invalid. A consideration of Rule 4 also shows that its compliance precedes the notification under Section 4 as well as compliance of Section 6 of the Act."

22. The learned counsel further places reliance on the decision of this Court in the case of *Royal Orchid Hotels Ltd. v. G. Jayaram Reddy & Ors.*⁷, wherein it was held that if the land is to be acquired for a company, then the State Government and the company are bound to comply with the provisions contained in Part VII of the L.A. Act.

23. The learned counsel further submits that the argument advanced on behalf of TML that the cost of acquisition has been borne by the public exchequer, if accepted, would in fact make this an even more egregious violation of the L.A. Act. It is submitted that this would not only mean that a colourable device has been used to circumvent the provisions of Part VII of the L.A. Act, but that there has also been a clear violation of Section 41 of the L.A. Act, which provides that the cost of acquisition must be borne by the company and not by the State.

24. The learned counsel thus, submits that the entire land acquisition proceedings being a colourable exercise of power carried out in violation of the L.A. Act and the relevant Rules be set aside.

25. Mr. Rakesh Dwivedi, the learned senior counsel appearing on behalf of the State of West Bengal in the appeal arising out of SLP (C) No. 13645 of 2008 submits that the acquisition of land in Singur for TML is illegal as the same has been done in complete violation of the provisions of Sections 4 and 6 of the L.A. Act, as well as the non-compliance with Part VII of the L.A. Act and Rules applicable for acquisition of land in favour of a Company.

26. The learned senior counsel takes us through the cabinet notes with reference to the requisition letter of TML, extracted supra and submits that it becomes very clear from a perusal of the documents on record that the scouting and selection of land was done completely by TML, much before the issuance of the notification under Section 4 of the L.A. Act. The learned senior counsel further submits that initially, TML had submitted a proposal of requirement of 600 acres of land, which was subsequently increased to 1000 acres without any justification for seeking such vast extent of lands in favour of TML. This action of the State Government and its officers shows a complete non application of mind on the part of the cabinet while assessing how much land is needed for the project, before acquiring lands at the behest of TML.

27. The learned senior counsel further submits that post the amendment to the L.A. Act in the year 1984, it becomes clear that the acquisition for a company must comply with the requirements of Part VII of the L.A. Act, and must only be done in accordance with the same. The same cannot be fused with acquisition of land for a public purpose. The learned senior counsel places reliance on the Statement of Objects and Reasons of the Amendment Act 68 of 1984, the relevant part of which has been extracted supra.

28. The learned senior counsel further submits that Parliamentary Debates relating to the Amendment Act 68 of 1984 also indicate that acquisition for company could be done only under Part VII of the L.A. Act.

29. The learned senior counsel places reliance on the decision of the Madhya Pradesh High Court in the case of *Chaitram Verma and Ors. v. Land Acquisition Officer, Raipur and Ors.*⁸ and the Allahabad High Court in the case of *Pooran and Ors. v. State of U.P. and Ors.*⁹, wherein it has been held that after the amendment to the L.A. Act in the year 1984, acquisition of land for a company can happen only in accordance with Part VII of the L.A. Act.

30. The learned senior counsel further contends that the doctrine of infusion of public revenue by the government or by corporations covered by Section 3(cc) of the L.A. would not be available after the amendments made in the year 1984. In the pre-1984 legal position, there was lack of clarity in the inclusive definition of public purpose in Section 3(f) to the L.A. Act. Therefore, the Supreme Court in a number of cases resorted to the second proviso to Section 6 for holding that infusion of public revenue would make the acquisition for a company an acquisition for public purpose. After the exclusion of companies from the purview of Section 3(f) of the L.A. Act, infusion of public revenue cannot be resorted to for holding that acquisition of land in favour of a company is one for public purpose. The learned senior counsel thus, submits that the reliance placed by the learned senior counsel appearing on behalf of TML on the pre-1984 decisions, including *Pandit Jhandu Lal v. State of Punjab*¹⁰, *Somawanti Vs. State of Punjab*¹¹, *Jage Ram v. State of Haryana*¹² and *Aflatoon V. Lt. Governor of Delhi*¹³ is misplaced as the same have no application to the facts of the instant case as the same pertain to the pre-1984 situation. It is further submitted that the reliance placed upon the decisions of this Court in the cases of *Pratibha Nema (Supra)* and *Amarnath Ashram (Supra)* has no bearing on the facts of the instant case as the same have not correctly appreciated the scope of the 1984 amendment to the provision Section 3(f) of the L.A. Act.

31. The learned senior counsel further contends that the objections filed by the landowners/ cultivators before the Land Acquisition Collector after publication of the notification under Section 4 of the L.A. Act were also rejected under Section 5-A(2) of the L.A. Act in a mechanical manner without any application of mind. The learned senior counsel contends that the State Government of West Bengal also recorded its satisfaction under Section 6 of the L.A. Act by recording its satisfaction mechanically, without considering the need of the lands. It is further submitted by the learned senior counsel that with regard to conducting an inquiry under Section 5-A(2) of the L.A. Act, this Court has held in a catena of decisions that

it is a valuable right available to the land owners and cultivators, and therefore, it casts a statutory obligation on the part of the Collector and the State Government to consider the objections and take a decision in accordance with law. The application of mind by the concerned Land Acquisition Collector including the State Government before issuing the notification under Section 6 of the Act, for acquisition of lands is a sine qua non. The learned senior counsel places reliance on the decision of this Court in the case of Raghbir wherein it has been held as under:

"In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilized for execution of the particular project or scheme. Though, it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons."

32. The learned senior counsel further places reliance on the observations made by this Court in the case of *Surinder Singh Brar & Ors. v. Union of India*¹⁵ to submit that the Collector did not apply his mind at all while considering the objections under Section 5-A (2) of the L.A. Act. In that case, this Court observed as under:

"The reason why the LAO did not apply his mind to the objections filed by the Appellants and other landowners is obvious. He was a minion in the hierarchy of the administration of the Union Territory of Chandigarh and could not have even thought of making recommendations contrary to what was contained in the letter sent by the Administrator to Surinder Singh Brar. If he had shown the courage of acting independently and made recommendation against the acquisition of land, he would have surely been shifted from that post and his career would have been jeopardized. In the system of governance which we have today, junior officers in the administration cannot even think of, what to say of, acting against the wishes/dictates of their superiors. One who violates this unwritten code of conduct does so at his own peril and is described as a foolhardy. Even those constituting higher strata of services follow the path of least resistance and find it most convenient to tow the line of their

superiors. Therefore, the LAO cannot be blamed for having acted as an obedient subordinate of the superior authorities, including the Administrator. However, that cannot be a legitimate ground to approve the reports prepared by him without even a semblance of consideration of the objections filed by the Appellants and other landowners and we have no hesitation to hold that the LAO failed to discharge the statutory duty cast upon him to prepare a report after objectively considering the objections filed under Section 5A(1) and submissions made by the objectors during the course of personal hearing."

33. The learned senior counsel thus, contends that the acquisition of the vast tracts of lands of the owners/cultivators, depriving them of their constitutional rights for non-compliance with the mandatory procedure as provided under Section 5-A (2) and Part VII of the L.A. Act. Therefore the acquisition proceedings are void ab initio in law.

34. Mr. K. Parasaran, the learned senior counsel appearing on behalf of WBIDC adopts the arguments advanced by learned senior counsel Mr. Rakesh Dwivedi on behalf of the West Bengal State Government.

35. On the other hand, Mr. Abhishek Manu Singhvi, the learned senior counsel appearing on behalf of TML contends that the government is free to acquire certain lands keeping in mind a certain entity, and the mere fact that the acquisition of lands has been done keeping that entity in mind will not render the acquisition invalid. It is submitted that the State of West Bengal as a matter of Industrial Policy decided to make efforts to establish more manufacturing industries with a view to attract more private sector investment in the manufacturing industry. The tremendous growth potential of automobile industry in the State of West Bengal would have boosted economy, created job opportunities, direct and indirect, and have had an impact on the secondary employment in the associated service sectors. The learned senior counsel further places strong reliance on the constitution bench decision of this Court in the case of Aflatoon (supra), wherein this Court has held that the acquisition of land for the "planned development of Delhi" was a valid public purpose. It was held that the fact that after the acquisition, the land was handed over to the co-operative housing societies would not attract Part VII of the L.A. Act, 1894. This Court has held as under:

"24. It was contended by Dr. Singhvi that the acquisition was really for the cooperative housing societies which are companies within the definition of the word 'company' in Section 3(e) of the Act, and, therefore, the provisions of Part VII of the Act should have been complied with. Both the learned Single Judge and the Division Bench of the High Court were of the view that the acquisition was not for 'company'. We see no reason to differ from their view. The mere fact that after the acquisition the Government proposed to hand over, or, in fact, handed over, a portion of the property acquired for development to the cooperative housing societies would not make the acquisition one for 'company'. Nor are we satisfied that there is any merit in the contention that compensation to be paid for the acquisition came from the consideration paid by the cooperative societies. In the light of the averments in the counter affidavit filed in the writ petitions here, it is difficult to hold that it was

cooperatives which provided the fund for the acquisition. Merely because the Government allotted a part of the property to cooperative societies for development, it would not follow that the acquisition was for cooperative societies, and therefore, Part VII of the Act was attracted."

36. The learned senior counsel further placed reliance on the decision of this Court in the case of *Mandir Shree Sita Ramji v. Land Acquisition Collector & Ors.*¹⁶, wherein it was held as under:

"12. We have considered the submissions of both the sides. In our view, there is no merit in the challenge to the proposed acquisition on the ground that the acquisition was for the purposes of the society covered by Agreement dated 9th May, 1972. The subsequent Notification is merely a follow up of the earlier Notification. The entire acquisition is for "planned development of Delhi". To be remembered that Appellants' land is in the midst of the 35000 acres which have been acquired pursuant to the Notification under Section 4 issued in 1959. The Agreement dated 19th May, 1972 does not specify that it is the Appellants' land which is to be allotted to that Society. The Society is to be allotted some land and even if Appellants' land is allotted to this Society, after acquisition, it will not mean that the acquisition was for this Society. Therefore, the provisions of Part VII of the Land Acquisition Act need not have been complied with."

37. The learned senior counsel submits that in the instant case, the mere fact that TML looked at and inspected some sites before the lands were finally acquired does not take away from the fact that the lands were, in fact, acquired in favour of WBIDC for a public purpose. It is further submitted that the fact that the compensation amount of Rs. 138 crores was deposited by WBIDC and not by TML also keeps the acquisition of the lands in the instant case out of the purview of Part VII of the L.A. Act and the relevant Rules. It is submitted that the essential test to determine as to whether the acquisition of the lands in question is for public purpose, is whether the funds for acquisition are coming from public funds. The learned senior counsel places reliance on the Constitution Bench decision of this Court in the case of *Pandit Jhandu Lal* (supra), wherein it was held as under: "Section 6 is, in terms, made subject to the provisions of Part VII of the Act. The provisions of Part VII, read with section 6 of the Act, lead to this result that the declaration for the acquisition for a Company shall not be made unless the compensation to be awarded for the property is to be paid by a company. The declaration for the acquisition for a public purpose, similarly, cannot be made unless the compensation, wholly or partly, is to be paid out of public funds. Therefore, in the case of an acquisition for a Company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But, that does not necessarily mean that an acquisition of a Company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition for a public purpose is that the cost of the acquisition is should be borne, wholly or in part, out of public funds. Hence, an acquisition for a Company may also be made for a public purpose, within the

meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition for a Company is to be made at the cost entirely of the Company itself, such an acquisition comes under the provisions of Part VII. As in the present instance, it appears that part at any rate of the compensation to be awarded for the acquisition is to come eventually from out of public revenues, it must be held that the acquisition is not for a Company simpliciter. It was not, therefore, necessary to go through the procedure prescribed by Part VII. We, therefore, agree with the conclusion of the High Court, though not for the same reasons."

The learned senior counsel further submits that the above position of law was reiterated by this Court more recently in the case of *Pratibha Nema v. State of M.P.*¹⁷, wherein it was held as under:

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

38. The learned senior counsel further contends that this Court has in fact, also held that it is enough if only a part of the amount comes from public funds to make the acquisition as one for public purpose. Reliance has been placed on the Constitution Bench decision of this Court in the case of *Somawanti* (supra), wherein it was held as under:

"We would like to add that the view taken in *Senja Naicken's* case I.L.R. (1926) Mad. 308 has been followed by the various High Courts of India. On the basis of the correctness of that view the State Governments have been acquiring private properties all over the country by contributing only token amounts towards the cost of acquisition. Titles to many such properties would be unsettled if we were now to take the view that 'partly at public expense' means substantially at public expense. therefore, on the principle of *stare decisis* the view taken in *Senja Naicken's* case I.L.R. (1926) Mad. 308 should not be disturbed. We would, however, guard ourselves against being understood to say that a token contribution by the State towards the cost of acquisition will be sufficient compliance with the law in each and every case. Whether such contribution meets the requirements of the law would depend upon the facts of every case. Indeed the fact that the State's contribution is nominal may well indicate, in Particular circumstances that the action of the State was a colourable exercise of power. In our opinion 'part' does not necessarily mean a substantial part

and that it will be open to the Court in every case which comes up before it to examine whether the contribution made by the state satisfies the requirement of the law."

39. It is further submitted that the said position was reiterated by this Court in the case of *Jage Ram (supra)*, wherein it was held that a contribution of Rs.100/- by the State Government was sufficient to take the acquisition of land outside the purview of Part VII of the L.A. Act.

40. The learned senior counsel further contends that the cabinet meeting and cabinet memo do not substitute the notification under Section 4 of the L.A. Act, as well as the inquiry by the Land Acquisition Collector. It is submitted that even after the cabinet approval, it was upon the Land Acquisition Collector to survey and decide whether the lands in question can be acquired for that particular purpose or not. The discretion of the Land Acquisition Collector was unfettered and uncompromised. It is submitted that the inquiry of the Land Acquisition Collector was submitted in the instant case, and all the requirements as provided for under Part II of the L.A. Act were complied with while acquiring the lands in question in the instant case.

41. We have heard the learned counsel appearing on behalf of all the parties. Before we examine the contentions in detail and consider the matter on merits, it is important to address an issue raised by Mr. Abhishek Manu Singhvi and Mr. Gopal Jain, the learned senior counsel appearing on behalf of TML, that the State of West Bengal cannot be allowed to resile from the position taken by them in their pleadings, without even filing an affidavit. It is contended by them that the State of West Bengal had specifically contended before the High Court that Part VII of the L.A. Act has no application in the instant case and the acquisition of land was one which was done in the public interest. The learned senior counsel submit that even before the Supreme Court, the State of West Bengal has stated in its counter affidavit that establishing a new industry is the public purpose as envisaged under Section 3(f) of the L.A. Act and that in the instant case, it was the state government which had acquired the lands in favour of WBIDC for the purpose of fulfilling its industrialization policy in the State of West Bengal.

42. Dr. Abhishek Manu Singhvi, learned senior counsel very vehemently contends that the State Government of West Bengal and WBIDC cannot be allowed to change their stand before this Court in these proceedings at the time of arguments merely because of change of Government in the State of West Bengal after the completion of the land acquisition proceedings. It is further contended that the change of stand by the State government at this stage without filing an affidavit amounts to violation of the principles of natural justice. Strong reliance is placed by him on the decision of this Court in the case of *Jal Mahal Resort (P) Ltd. v. K.P. Sharma*¹⁸ in this regard.

43. Further reliance is placed by him on the decision of this Court in the case of *Andhra Pradesh Dairy Development Corpn. Federation v. B. Narasimha Reddy*¹⁹, wherein it was held as under:

"40. In the matter of Government of a State, the succeeding Government is duty bound to continue and carry on the unfinished job of the previous Government, for the reason that the action is that of the "State", within the meaning of Article 12 of the Constitution, which continues to subsist and therefore, it is not required that the new Government can plead contrary from the State action taken by the previous Government in respect of a particular subject. The State, being a continuing body can be stopped from changing its stand in a given case, but where after holding enquiry it came to the conclusion that action was not in conformity with law, the doctrine of estoppel would not apply. Thus, unless the act done by the previous Government is found to be contrary to the statutory provisions, unreasonable or against policy, the State should not change its stand merely because the other political party has come into power. "Political agenda of an individual or a political party should not be subversive of rule of law".

The Government has to rise above the nexus of vested interest and nepotism etc. as the principles of governance have to be tested on the touchstone of justice, equity and fair play. The decision must be taken in good faith and must be legitimate." Reliance is also placed by him on the decision of this Court in the case of *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu & Ors.*²⁰, wherein it was held as under:

" No doubt Mahapalika is continuing body and it will be estopped from changing its stand in the given case. But when Mahapalika finds that its action was contrary to the provisions of law by which it was constituted there could certainly be no impediment in its way to change its stand. There cannot be any estoppel operating against the Mahapalika."

44. It is further contended that State government should not be allowed to change its stand merely because some other political party has come into power after the acquisition proceedings and the legal proceedings of the land owners were concluded in the High Court by passing the impugned common judgment and order.

45. Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the State of West Bengal on the other hand rebuts the above submission made by the learned senior counsel appearing on behalf of TML. It is submitted that there is absolutely no law which mandates that upon the change of government, the stance taken earlier cannot be changed, more so, when the earlier stance is clearly opposed to both law and public policy. The learned senior counsel submits that even in the case of *A.P. Dairy (supra)* on which Reliance has been placed upon by the learned senior counsel appearing on behalf of TML, this Court has held that the state can change its stand if it is found that the act done by the previous government is contrary to provisions of law or is against public policy.

46. The learned senior counsel further submits that in the instant case, having regard to the nature of

acquisition of lands made by the previous Government, the lands were acquired by the State Government in exercise of its eminent domain power without following the statutory provisions contained in Sections 3(f), 4 and 6 of the L.A. Act as well as Part VII of the L.A. Act. It is submitted that the previous government of the state has violated statutory provisions of the L.A. Act in acquiring the vast extent of lands having immense agricultural potential, thus depriving the agricultural occupation of a large number of land owners/ cultivators, thereby depriving them of their constitutional and fundamental rights guaranteed under the Constitution of India. It is submitted that the acquisition of the lands in the instant case has been made at the instance of TML. Therefore, the previous Government has violated the law in acquiring the lands. It is submitted that the stand of the present government becomes clear from the fact that it enacted the Singur Act, 2011, the constitutional validity of which has been challenged by TML by way of filing petitions, which were allowed by the High Court, against which judgment, the State Government filed SLPs which are currently pending before this Court. Therefore, the State Government has changed its stand in not justifying the acquisition proceedings.

47. We are unable to agree with the contentions advanced by the learned senior counsel appearing on behalf of TML. While it is true that rule of law cannot be sacrificed for the sake of furthering political agendas, it is also a well established position of law that a stand taken by the state government can be changed subsequently if there is material on record to show that the earlier action of the acquisition of lands by the State Government was illegal or suffers from legal malafides or colourable exercise of power.

48. Further, in any case, it is also well settled position of law that this Court is not bound by affidavits and counter affidavits filed by the parties. In exercise of its power under Article 136 of the Constitution of India, this Court can examine the material on record in order to determine whether the action of the previous state government in acquiring the lands in the instant case was in accordance with law or not. In the case of *P.S.R. Sadanatham v. Arunachalam*²¹, a Constitution Bench of this Court held as under:

"7 In express terms, Article 136 does not confer a right of appeal on a party as such but it confers a wide discretionary power on the Supreme Court to interfere in suitable cases. The discretionary dimension is considerable but that relates to the power of the court. The question is whether it spells by implication, a fair procedure as contemplated by Article 21. In our view, it does. Article 136 is a special jurisdiction. It is residuary power; it is extraordinary in its amplitude, its limit, when it chases injustice, in the sky itself. This Court functionally fulfils itself by reaching out to injustice wherever it is and this power is largely derived in the common run of cases from Art 136 "

(emphasis laid by this Court)

In the instant case, the cabinet records, communication between TML and representative of the State Government, the notifications published under Sections 4 and 6 of the L.A. Act are

all on record. We shall examine the same to assess the validity of the acquisition of the lands in these proceedings.

49. The above said preliminary objection, as has been raised by the learned senior counsel appearing on behalf of TML is thus, not accepted. We now proceed to decide the matter on merits.

50. On the basis of the factual and rival legal contentions advanced on behalf of the learned counsel appearing on behalf of the parties as well as the material produced on record and from perusal of the original files, the following points would arise for consideration of this Court:

“1. Whether the lands involved in these proceedings have been acquired for a public purpose or for a Company (TML)?

2. If the lands have been acquired for a Company, whether the procedure provided for under Part VII of the L.A. Act has been complied with by the state government?

3. Whether the inquiry as contemplated under Section 5-A(2) of the L.A. Act has been duly conducted by the Land Acquisition Collector?

4. Whether the Land Acquisition Collector has assigned reasons in his report for rejecting the objections raised by the landowners/cultivators after application of mind?

5. Whether the report of the Land Acquisition Collector is based on the decision of the State Government taken prior to issuing notification under Section 6 of the L.A. Act?

6. Whether the awards have been passed after holding due inquiry under Section 9 of the L.A. Act and also in compliance with the principles of natural justice?

7. Whether the compensation awarded in favour of the land owners/cultivators is based on a proper appreciation of the market value of the land?

8. What is the legal effect on the acquisition proceedings of not conducting an inquiry under Section 5-A (2) and passing composite awards under Section 11 of the L.A. Act?

9. What order can be passed in these proceedings at this stage?

Answer to Point Nos. 1 and 2”

51. Issue Nos. 1 and 2 are inter-related, hence, they are answered together as under: Section 3(f) of the Act defines acquisition of land for 'public purpose' by the State Government, which reads thus:

"3(f) the expression "public purpose' includes–

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

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

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

(vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority; but does not include acquisition of lands for Companies"

(emphasis laid by this Court)

The definition of the term 'Company' was inserted in the definition of Section 3(e) of the L.A. Act by Act 68 of 1984 with effect from 24.09.1984. Section 3(e) of the L.A. Act defines a company as:

"(i) a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956) other than a Government Company referred to in cl. (cc) rr

52. Section 3(f) of the L.A. Act, which defines what public purpose is for the purpose of acquisition of land, clearly indicates that the acquisition of land for companies is not covered within the public purpose. It is in light of this statutory scheme under the provisions of the L.A. Act that it becomes crucial to examine whether the lands in question were acquired for a public purpose or was it acquired by the State Government for a company (TML) in the instant case.

53. A perusal of the notification issued under Section 4(1) of the L.A. Act extracted supra clearly shows that the proposed lands in the notification are needed for the setting up of the Tata Small Car project in mouza Berabery, P.S. Singur, District Hooghly.

54. The Cabinet Memo dated 30.05.2006, extracted supra, at Serial No. 3 mentioned acquisition of lands measuring 1053 acres by WBIDC for the purpose of setting up of the Tata Motor's 'Small Car Project' in the State of West Bengal. The said Cabinet Memo received the approval of the Chief Minister on 05.06.2006 after which the notification under Section 4 of the L.A. Act was published in the official gazette.

55. As far as the proposal is concerned, there is nothing on record to indicate that WBIDC made such requisition to the State Government giving its proposal for acquisition of the proposed lands mentioned in the notification issued under Section 4 of the L.A. Act, which are required for 'public purpose' as defined under Section 3(f) (iii) of the L.A. Act, which enables the WBIDC to give requisition for acquiring the lands in its favour for the planned development of land out of the public funds in pursuance of any scheme or policy of Government. As is evident from the Notifications issued under the L.A. Act and from the cabinet memo, there is no mention about such requisition being made by the Corporation to the State Government regarding the proposed lands being required for acquisition in favour of WBIDC for planned development of land in pursuance of any scheme or policy of the Government. Even from a perusal of the letter dated 29.08.2006, written by the Joint Secretary, Land and Land Reforms Department, Government of West Bengal, it becomes clear that the state government did not apply its mind while considering the need of the land and merely followed the document on which the Collector had signed. It reads as under:

"It is clear from the report and records relating to the proceedings u/s 5A of the L.A. Act, 1894 received from the L.A. Collector after disposal of objections from the persons having rights and interest in land in the Berabari and Khaserbari mouzas of Singur PS where 6 LA cases comprising for setting up Tata Small Car Project have been initiated, that the Collector did not find any objection having merits for change/modification of the area within the conceived area of acquisition and he has recommended the land covered u/s 4 notification in the aforesaid mouzas are fit for acquisition for the public purpose on behalf of WBIDC, the RB. On perusal of the reports and records we may agree to the above recommendation of the Collector and issue declaration u/s/ 6 as prescribed in the aforesaid Act." The letter of the Joint Secretary mentions the WBIDC to be the requisitioning body. However, the same finds no mention in the notification issued under Section 6 of the L.A. Act, the relevant portion of which has been extracted supra.

56. Even if the argument advanced on behalf of TML were to be accepted, that it was the policy of the state government to generate employment and increase socio economic development in the State, the relevant policy documents are not forthcoming in the original acquisition files which were made available for this Court. Thus, by no stretch of imagination can the acquisition of lands in the instant case be said to be at the instance of WBIDC, or for the fulfillment of some scheme of the Corporation or the State Government. Thus, it cannot be said to attract Section 3(f)(iii), (iv) or (vi) either. On the contrary, what is on record is the minutes of meetings between the representatives of the West Bengal Government and TML dated 17.03.2006, which state that TML is interested in setting up a 'special category project'

in the State to manufacture 2,50,000 units for its 'Small Car Project'. As per the project requirement mentioned in the letter written by Deputy General Manager TML to the Principal Secretary, Commerce & Industries Department, Government of West Bengal dated 19.01.2006, 400 acres of land were required for setting up of the factory, 200 acres for vendor park and 100 acres for township. The said letter was forwarded by the Commerce and Industries Department to the Principal Secretary, Land and Land Reforms Department on 24.01.2006 and the Finance Secretary for their consideration and seeking their views in this regard. It is undisputed fact that the State Government has not deposited the public money towards the cost of acquisition of land to initiate the acquisition proceedings to show that the acquisition of lands is for public purpose which is an essential requirement under the provision of Section 6 of the L.A. Act. As can be seen, the notification issued under Section 6 of the L.A. Act merely provides that the land is needed for the setting up of the Tata Small Car project, which is a public purpose under the L.A. Act. In the case of *Usha Stud and Agricultural Farms Pvt. Ltd. v. State of Haryana & Ors.*²², a three judge bench of this Court, after adverting to a catena of case law on the subject held as under:

"The ratio of the aforesaid judgments is that Section 5-A(2), which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. That section also makes it obligatory for the Collector to submit report(s) to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him so that the Government may take appropriate decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1)."

(emphasis laid by this Court)

Thus, there seems to be no application of mind either at the stage of issuance of the notification under Section 4 of the L.A. Act, or the report of Collector under Section 5-A (2) of the L.A. Act or the issuance of the final notification under Section 6 of the L.A. Act. Such an acquisition, if allowed to sustain, would lead to the attempt to justify any and every acquisition of land of the most vulnerable sections of the society in the name of 'public purpose' to promote socio-economic development.

57. On the other hand, it is the Corporation which has raised the cost of acquisition by way of taking loan from nationalized banks and the same is said to have been deposited with the State Government. As has rightly been contended by Mr. Kalyan Banerjee, learned senior counsel by placing reliance on various decisions of this Court, which have been adverted to

supra, WBIDC cannot even be said to be a local authority for the purpose of the L.A. Act and therefore the deposit of money towards acquisition cost does not satisfy the statutory requirement under Section 6 of the Act. Thus, the contention advanced by the learned senior counsel appearing on behalf of TML that the acquisition in the instant case is one for public purpose as the funds for same have come from public revenue, also cannot be accepted. Thus, neither there is a scheme of the Government, nor the funds have been derived from the public revenue and that is why the acquisition in the instant case cannot be said to be one for 'public purpose'.

58. The contention advanced by the learned senior counsel appearing on behalf of TML that this Court has consistently taken the view that acquisition in favour of a statutory corporation or development authority for land development including industrial development, makes the acquisition of lands one for 'public purpose', as defined under Section 3(f) (iv) or (vii) of the L.A. Act and there is no need to follow the procedure for acquisition as laid down in Part VII of the L.A. Act, cannot be accepted by me. After the passing of the Land Acquisition Amendment Act, 1984, acquisition of land for a company is no longer covered under 'public purpose' in view of Section 3(f)(viii) of the L.A. Act. Apart from the above statutory provisions inserted by way of an amendment the Objects and Reasons for such amendment referred to supra upon which strong reliance has been placed by Mr. Colin Gonsalves and Mr. Rakesh Dwivedi, learned senior counsel on behalf of the owners and State would make it abundantly clear that the mandatory procedure as laid down under Part VII of the L.A. Act read with the rules framed there under was not followed by the State Government before the notifications were published.

59. From a perusal of both the statutory provisions of the L.A. Act as well as the case law on the subject referred to supra upon which strong reliance has been rightly placed by the learned senior counsel on behalf of the owners/cultivators and State Government, it becomes clear that the state government can acquire land under the public purpose clauses (iv) and (vii) of the Act for industrial estates, housing colonies and economic parks/zones even where the type of industry has been identified. So, an acquisition made for an industrial estate of a particular type of industry like small cars is permissible under the 'public purpose' for the purpose of the L.A. Act under the above clauses of Section 3 (f) of the Act. Before land could be acquired, the procedure consistent with the statutory provisions of law must be followed mandatorily. There is nothing in law which would support the acquisition of land for a particular Company under the guise of 'public purpose', rendering the exception provided under Section 3(f)(viii) of the L.A. Act useless and nugatory.

60. In the case of Devender Pal Singh (supra), this Court has held that when the acquisition of land is for a public purpose, it is Part II of the L.A. Act which would apply and where the acquisition of land is at the instance of a Company, the procedure to be adopted is laid down in Part VII of the L.A. Act. It was held as under:

"40. Distinction between acquisition under Part II and Part VII are self- evident. The State was not only Obligated to issue a notification clearly stating as to whether the

acquisition is for a public purpose or for the company. Section 6 categorically states so, as would appear from the second proviso appended thereto.

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

42. It is furthermore trite that Land Acquisition Act is an expropriatory legislation. (See *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai and Ors.*; and *Chairman, Indore Vikas Pradhikaran v. Pure Industrial Cock & Chem. Ltd. and Ors.*)

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

(emphasis laid by this Court)

61. The decisions of this Court in the cases of *Pandit Jhandu Lal (supra)*, *Somawanti (supra)*, *Jage Ram (supra)* and *Aflatoon (supra)* upon which strong reliance has been placed by the learned senior counsel appearing on behalf of TML, have no bearing on the facts of the instant case, as they were decided prior to the enactment of the Land Acquisition (Amendment) Act, 1984, except the decision of this Court in the case of *Pratibha Nema (supra)*.

62. In the case of *Pratibha Nema*, this Court did not consider the statement of objects and reasons of the Land Acquisition (Amendment) Act, 1984, the relevant portion of which has been extracted supra. Further, the fact situation in that case was also very different as this Court was dealing with acquisition of land for the purpose of setting up a 'diamond park' pursuant to the policy decision by the state government of Madhya Pradesh.

63. In this day and age of fast paced development, it is completely understandable for the state government to want to acquire lands to set up industrial units. What, however, cannot be lost sight of is the fact that when the brunt of this 'development' is borne by the weakest sections of the society, more so, poor agricultural workers who have no means of raising a voice against the action of the mighty state government, as is the case in the instant fact situation, it is the onerous duty of the state Government to ensure that the mandatory procedure laid down under the L.A. Act and the Rules framed there under are followed scrupulously otherwise the acquisition proceedings will be rendered void ab initio in law. Compliance with the provisions of the L.A. Act cannot be treated as an empty formality by the State Government, as that would be akin to handing over the eminent domain power of State to the executive, which cannot be permitted in a democratic country which is required

to be governed by the rule of law. This Court in the case of *State of Punjab v. Gurdial Singh*²³, has held with regard to the legal mala fides as under;

"9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated:

"I repeat...that all power is a trust-that we are accountable for its exercise-that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power, vitiates the acquisition or other official act."

(emphasis laid by this Court)

In the case of *S. Pratap Singh v. State of Punjab*²⁴, a constitution bench of this Court has held that:

"In legal parlance it would be a case of a fraud on a power, though no corrupt motive or bargain is imputed. In this sense, if it could be shown that an authority exercising a power has taken into account - it may even be bona fide and with the best of intention,as a relevant factor something which it could not properly take into account, in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. Sometimes Courts are confronted with cases where the purposes sought to be achieved are mixed, - some relevant and some alien to the purpose. The courts have, on occasions, resolved the difficulty by finding out the dominant purpose which impelled the action, and where the power itself is conditioned by a purpose, have proceeded to invalidate the exercise of the power when any irrelevant purpose is proved to have entered the mind of the authority (See *Sadler v. Sheffield Corporation* [1924] 1 CH 483. as also Lord

Denning' s observation Earl fitzwilliam etc. v. Minister of T. & C. Planning [1951] 2 K.B. 284,. This is on the principle that if in such a situation the dominant purpose is unlawful then the act itself is unlawful and it is not cured by saying that they had another purpose which was lawful."

(emphasis laid by this Court)

It is also a well settled principle of law that if the manner of doing a particular act is prescribed under any statute the act must be done in that manner or not at all. In the case of *Babu Verghese & Ors. v. Bar Council Of Kerala & Ors.*²⁵, this Court has held as under:

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under :

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh and Anr. v. State of Vindhya Pradesh and again in Deep Chand v. State of Rajasthan. These cases were considered by a Three-Judge Bench of this Court in State of Uttar Pradesh v. Singhara Singh and Ors. and the rule laid down in Nazir Ahmad' s case (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognized as a salutary principle of administrative law."

(emphasis laid by this Court)

64. In the instant case, what makes the acquisition proceedings perverse is not the fact that the lands were needed for setting up of an automobile industry, which would help to generate employment as well as promote socio economic development in the State, but what makes the acquisition proceedings perverse is that the proper procedure as laid down under Part VII of the L.A. Act read with Rules was not followed by the State Government. The acquisition of land for and at the instance of the company was sought to be disguised as acquisition of land for 'public purpose' in order to circumvent compliance with the mandatory provisions of Part VII of the L.A. Act. This action of the State Government is grossly perverse and illegal and void ab initio in law and such an exercise of power by the state government for acquisition of lands cannot be allowed under any circumstance. If such acquisitions of lands are permitted, it would render entire Part VII of the L.A. Act as nugatory and redundant, as then virtually every acquisition of land in favour of a company could be justified as one for a 'public purpose' on the ground that the setting up of industry would generate employment and promote socio economic development in the State. Surely, that could not have been the

intention of the legislature in providing the provisions of Part VII read with 3 (f) of the L.A. Act. From a perusal of the materials on record from the original files, the relevant extracts from the letters addressed by TML to the State Government of West Bengal and Cabinet notes which have been extracted and discussed supra, it becomes clear that in the instant case, the lands in question were acquired by the State Government for a particular Company (TML), at the instance of that Company. Further, the exact location and site of the land was also identified by TML. Even the notifications issued under Sections 4 and 6 of the L.A. Act clearly state that the land in question was being acquired for the 'Small Car Project' of TML. In view of the foregoing reasons, by no stretch of imagination can such an acquisition of lands be held to be one for 'public purpose' and not for a company. If the acquisition of lands in the instant case does not amount to one for the company, I do not know what would.

65. In view of the aforesaid categorical findings recorded by me based on the materials on record, including cabinet memo, minutes of meetings between representatives of the state government and TML as well as the notifications issued under Sections 4 and 6 of the L.A. Act, 1984, it is clear that the acquisition of lands in the instant case is for the Company (TML). Admittedly, the procedure for acquisition as contemplated under Sections 39, 40 and 41 of Part VII of the L.A. Act read with Rules 3, 4 and 5 of the Land Acquisition (Companies) Rules, 1963 has not been followed, as the acquisition was sought to be guised as one for 'public purpose' under The acquisition of land in the instant case in favour of the Company is thus, improper for not following the mandatory procedure prescribed under Part VII of the L.A. Act and Rules and therefore the acquisition proceedings are liable to be quashed.

66. Further, even after the lands were acquired in its favour, TML could not start operations in accordance with the terms of the lease deed. The same becomes clear from a perusal of the letter dated 28.09.2010 written by the Managing Director, India Operations of TML to the Managing Director of WBIDC, which reads as under:

"We had proposed an integrated Automobile Plant consisting of Manufacturing operations by Tata Motors as well as co-locating vendors in the same complex. You were kind enough to lease 645 acres to Tata Motors and 290 acres to vendors as recommended by Tata Motors. We, therefore, concluded that a peaceful environment could not be created for normal working of the plant and we had to take the most painful decision to close the operations on 3rd October, 2008. Meanwhile, we also took permission from you to remove our equipment and machinery, which we have now done. We, invested Rs. 440 crores and of course continue to incur Rs. 1 crore per month towards maintenance. This is an addition to the investment of about Rs. 171 crores (inclusive of Rs. 40 crores for land premium charges) done by our vendors. We have also had discussions with the Hon'ble Industry Minister as well as with the Industry Secretary for finding various alternative uses for this plant. In this respect, we would like to submit that we could also consider the option of moving out from the premises provided we and our vendors are compensated for the cost of the buildings, sheds on the premises and expenses incurred in developing the infrastructure which remains on the premises. Thus, it is an undisputed fact that even

once the cost of acquisition was borne by WBIDC by way of raising loan from banks, TML did not start operations and held on to the possession of the land. It did not engage in any other manufacturing activity either. Subsequently, TML also removed the machinery from the concerned plant and shifted the same to the state of Gujarat and the lands in question have since been resumed by WBIDC.

67. In view of the foregoing reasons, Point Nos. 1 and 2 are answered in favour of the land owners/cultivators.

Answer to Point Nos. 3, 4 and 5

68. From a perusal of the materials on record and original acquisition files, it is evident that a large number of objections were filed by the land owners before the notification was issued under Section 4 of the L.A. Act. The same were not considered properly under Section 5-A (2) of the L.A. Act. Notices were issued to the objectors individually but the same could not be served upon the owners/cultivators of the proposed lands to be acquired. It is further mentioned in the record that the announcements were made through loudspeakers and by publications in the newspapers. It has been submitted by Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the State of West Bengal that once a decision was taken to serve the land owners/cultivators individually then it should have been ensured by the Land Acquisition Collector that the notices were so served. However, the fact that the same was not done is evident from a perusal of the acquisition files maintained by the State Government. Even though the land owners/cultivators did not appear before the Land Acquisition Collector, the objections filed by them ought to have been considered objectively by him as required under Section 5-A (2) of the L.A. Act. Additionally, seven objections were filed under Section 5-A itself and some of the objections pertained to persons who were already running industrial units. The names of the objectors are as follows:

1. Kuldip Maity of Beraberi, P.S. Singur;
2. Subir Kumar Pal, Director of M/s Shree Bhumi Steel Pvt. Ltd., P.S. Singur;
3. M/s. Shanti Ceramics Pvt. Ltd., P.S. Singur;
4. Prashanta Kumar Jana, Vill-Habaspota, Singur;
5. M/s. Ajit Services Station on behalf of Tapan Kumar Bera, Advocate;
6. M/s. Shree Padma Sagar Exports Pvt. Ltd. of Singherbheri, P.S. Singur"

69. Some of these objectors were not given the opportunity to be heard as required under Section 5-A (2) of the L.A. Act. The same ought to have been given to them as required both under the statutory provisions of the L.A. Act as well as the principles of natural justice, as the acquisition of lands of the objectors would entail a serious civil consequence. In the case of *Mandir Shri Sita Ramji v. Lt. Governor of Delhi*²⁶, a Constitution Bench of this Court has held that it is the mandatory duty cast upon the Collector to follow the provision of Section 5-A (2) of the L.A. Act as under:

"5. The learned Single Judge allowed the writ petition on the basis that the appellant had no opportunity of being heard by the Collector under Section 5-A. The duty to afford such an opportunity is mandatory. A decision by the Government on the objection, when the Collector afforded no opportunity of being heard to the objector, would not be proper. The Power to hear the objection under Section 5-A is that of the Collector and not of the appropriate Government. It is no doubt true that the recommendation of the Land Acquisition Collector is not binding on the Government. The Government may choose either to accept the recommendation or to reject it; but the requirement of the section is that when a person's property is proposed to be acquired, he must be given an opportunity to show cause against it. Merely because the Government may not choose to accept the Recommendation of the Land Acquisition Collector, even when he makes one, it cannot be said that he need not make the recommendation at all but leave it to the Government to decide the matter. In other words, the fact that the Collector is not the authority to decide the objection does not exonerate him from his duty to hear the objector on the objection and make the recommendation."

(emphasis laid by this Court)

70. In the case of *Babu Ram v. State of Haryana*²⁷, Court observed as under:

"30. As indicated hereinabove in the various cases cited by Mr. Pradip Ghosh and, in particular, the decision in *Krishnan Lal Arneja* case, in which reference has been made to the observations made by this Court emphasized that a right under Section 5-A is not merely statutory but also has the flavor of fundamental rights under Articles 14 and 19 of the Constitution. Such observations had been made in reference to an observation made in the earlier decision in *Gurdial Singh* case and keeping in mind the fact that right to property was no longer a fundamental right, an observation was made that even if the right to was no longer a fundamental right, the observations relating to Article 14 would continue to apply in full force with regard to Section 5-A of the L.A. Act.

(emphasis laid by this Court)

From a perusal of the proceedings before the Collector, which are made available to this Court, it becomes clear that the same have been rejected without assigning any clear reasons or application of mind.

71. Thus, the report of the Collector is not a valid report in the eyes of law. The State Government has mechanically accepted the same without application of mind independently before issuing notification under Section 6 of the L.A. Act declaring that the lands are required for establishment of automobile industry by TML. Therefore, the point nos. 3, 4 and 5 are answered against the State Government and in favour of the land owners/cultivators.
Answer to Point Nos. 6, 7 and 8

72. After issuing the notifications under Section 6 of the L.A. Act declaring that the lands have been acquired for the purpose of industrial development, a statutory duty is cast upon the Collector to issue notice to the land owners/cultivators, as required under Section 9 of the L.A. Act, to determine the market value of the acquired land and award compensation as required under Section 11 of the L.A. Act which is mandatory for taking possession of the land by the State Government.

73. As can be seen from material on record, no individual notices were served upon the land owners/cultivators. A joint inquiry appears to have been conducted by the Land Acquisition Collector without giving them an adequate opportunity to establish their claim for determination of reasonable compensation for acquisition of lands by presenting true and correct market value of the lands. The determination of market value of lands by clubbing a number of cases together and passing a composite award is no award in the eyes of law. The inquiry, as contemplated under Section 11 of the L.A. Act, is a quasi judicial exercise of power on the part of the Collector in awarding just and reasonable compensation to the landowners/cultivators. That has not been done in the instant case. Further, the proviso to Section 11(1) of the L.A. Act provides that no award shall be made by the collector without the previous approval of either the appropriate government or such officer authorised by it for the above purpose. It was also brought to the notice of this Court that supplementary awards were also passed which is not legally permissible in law. For non-compliance of the above provisions of the L.A. Act, the composite awards are vitiated in law and therefore, the same are also liable to be quashed.

74. Accordingly, the point nos. 6, 7 and 8 are answered in favour of the land owners.

ORDER

75. The points formulated above have been answered by separate opinions. However we concur on the question of quashing the impugned acquisition proceedings and reliefs to be granted to the land owners/cultivators. The appeals are allowed, the common judgment and order dated 18.01.2008 passed in W.P. No. 23836 (W) of 2006 and connected writ petitions by the High Court of Calcutta is set aside. The acquisition of land of the landowners/cultivators in the instant case is declared as illegal and void. Since the nature of the acquired lands has been changed in view of the acquisition, we direct the Survey Settlement Department of the State Government of West Bengal to conduct a survey and identify the mouzas of lands acquired with reference to lay out plans, other connected records, village maps and survey settlement records of the lands in question within 10 weeks from the date of receipt of the copy of this order, in order to identify the respective portions of land which needs to be returned to the respective landowners/cultivators. Let possession of the lands be restored to the landowners/cultivators within 12 weeks from the date of receipt of the copy of this judgment and order. The compensation which has already been paid to the land owners/cultivators shall not be recovered by the state government as they have been deprived of the occupation and enjoyment of their lands for the last ten years. The

landowners/cultivators who have not withdrawn the compensation are permitted to withdraw the same which is in deposit either with the Land Acquisition Collector or the Court.

JUDGMENT

Arun Misiira,J.,

76. Leave granted.

77. I have gone through the draft judgment, however I find myself unable to agree with the same except on points for determination nos. 3, 4 and 5 framed by esteemed brother for the reasons mentioned hereinafter. Since esteemed Brother has taken pains to elaborate the facts and submissions in detail they need not be restated.

IN RE. QUESTION NOS. 1 AND 2

78. Question Nos.1 and 2 are inter-related and the main question for consideration is whether the acquisition of land is for a company and if so procedure provided under Part VII of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”) is required to be complied with by the State Government.

79 “Public purpose” has been defined in section 3(f) of the Land Acquisition Act. The definition is inclusive and the Amendment Act, 1984 excludes the acquisition for company from the definition of “public purpose” . Acquisition of land for company has been dealt with under Part VII of the Act. Under section 39 previous consent of the appropriate Government and execution of agreement is necessary for acquiring land for a company. Both sections 6 to 16 and sections 18 to 37 shall not be used to acquire land for any company under Part VII unless the previous consent of the appropriate Government has been obtained and company has executed the agreement as provided in section 41 of the Act. Section 41 further provides that in the case of acquisition for a company the payment of the cost of acquisition has to be borne by the company and other matters as specified in section 41 are also to be provided in the agreement. Such an agreement is required to be published in the Official Gazette and a statutory force is given to its terms on which the public shall be entitled to use the work.

80. Section 3(f) though excludes the acquisition for a company. However, at the same time it is inclusive definition and it is provided in section 3(f) that it includes the provision for development of land from public funds in pursuance of any scheme or policy of the Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned. Public purpose in section 3(iv) also includes the provision of land for a corporation owned or controlled by the State. The west Bengal Industrial Corporation is established by the State.

81. Public purpose has to be adjudged in the background of the facts of the instant case and the State of West Bengal decided to make effort to establish manufacturing industries with a view to attract more private sector investment and foreign direct investment for industrialization at par with the model adopted by other progressive States. It has considered the offer of TML - manufacturer of Nano car - as an opportunity for establishing manufacturing industry so as to further grab attention of automobile industry in the State of West Bengal to boost its economy for creating job opportunities, direct and indirect impact on secondary employment in the associated services. The proceedings were initiated under the Land Acquisition Act and the West Bengal Industrial Development Corporation (WBIDC) was the acquiring body which bore the entire cost of acquisition. Section 6 of the Act is extracted hereunder :

“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, and 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 (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, 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 (1 of 1967) but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 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 a manner hereinafter appearing.”

It is apparent from the provisions contained in second proviso to section 6 that declaration under section 6 shall not be made unless the compensation to be awarded for such property is to be paid by a company either wholly or partly out of public revenues or some fund controlled or managed by a local authority. The Explanation second to section 6(1) of the Act makes it clear that where the compensation awarded for the property is to be paid out of funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenue. Thus Explanation second makes it clear that when corporation pays the funds for acquisition of the property that such compensation shall be deemed to be paid out of public revenue. As already mentioned above the acquisition for a corporation is indeed within the public purpose as defined in section 3(f)(iv). Thus the concept of funds in section 6 as amended in 1984 comes into play in the case of acquisition of a land for a corporation and it is not necessary that the State Government itself should bear the cost of acquisition so as to make it expenditure out of public revenue even expenditure by the corporation owned or controlled by the State for acquisition shall be deemed to be made out of public revenues and when the land had been acquired for a corporation the land is to be vested in the Corporation though lease of the land has been granted to the company - Tata Motors Ltd., for short TML - for its aforesaid project. In my opinion it would remain acquisition for a public purpose as provided in section 3(f) of the Act; as also opined in the various decisions to be adverted hereinafter of this Court.

82. Acquisition of land for establishing such an industry would ultimately benefit the people and the very purpose of industrialization, generating job opportunities hence it would be open to the State Government to invoke the provisions of Part II of the Act. When Government wants to attract the investment, create job opportunities and aims at the development of the State and secondary development, job opportunities, such acquisition is permissible for public purpose.

83 . In *Somawanti v. State of Punjab(Supra)*, the concept of “public purpose” has been considered by this Court as under :

“53. “Public Purpose” as explained by this Court in Babu Barkaya Thakur case (1961) 1 SCR 128 : AIR 1960 SC 1203 means a purpose which is beneficial to the community. But whether a particular purpose is beneficial or is likely to be beneficial to the community or not is a matter primarily for the satisfaction of the State Government. In the notification under Section 6(1) it has been stated that the land is being acquired for a public purpose, namely, for setting up a factory for manufacturing various ranges of refrigeration compressors and ancillary equipment. It was vehemently argued before us that manufacture of refrigeration equipment cannot be regarded as beneficial to the community in the real sense of the word and that such equipment will at the most enable articles of luxury to be produced. But the State Government has taken the view that the manufacture of these articles is for the benefit of the community. No materials have been placed before us from which we could infer that the view of the Government is perverse or that its action based on it constitutes a fraud on its power to acquire land or is a colourable exercise by it of such power.

54. Further, the notification itself sets out the purpose for which the land is being acquired. That purpose, if we may recall, is to set up a factory for the manufacture of refrigeration compressors and ancillary equipment. The importance of this undertaking to a State such as the Punjab which has a surplus of fruit, dairy products etc. the general effect of the establishment of this factory on foreign exchange resources, spread of education, relieving the pressure on unemployment etc. have been set out in the affidavit of the respondent and their substance appears in the earlier part of this judgment. The affidavits have not been controverted and we have, therefore, no hesitation in acting upon them.”

84. In *Jage Ram & Ors. v. State of Haryana & Ors.(supra)* this Court held that setting up of a factory for purpose of manufacture of China-ware and Porcelain-ware including wall Glazed Tiles was a public purpose. This Court has held thus :

“8. There is no denying the fact that starting of a new industry is in public interest. It is stated in the affidavit filed on behalf of the State Government that the new State of Haryana was lacking in industries and consequently it had become difficult to tackle the problem of unemployment. There is also no denying the fact that the industrialisation of an area is in public interest. That apart, the question whether the starting of an industry is in public interest or not is essentially a question that has to be decided by the Government. That is a socio-economic question. This Court is not in a position to go into that question. So long as it is not established that the acquisition is sought to be made for some collateral purpose, the declaration of the Government that it is made for a public purpose is not open to challenge. Section 6(3) says that the declaration of the Government that the acquisition made is for public

purpose shall be conclusive evidence that the land is needed for a public purpose. Unless it is shown that there was a colourable exercise of power, it is not open to this Court to go behind that declaration and find out whether in a particular case the purpose for which the land was needed was a public purpose or not: see *Smt. Somavanti v. State of Punjab* AIR 1963 SC 151 and *Raja Anand Brahma Shah v. State of U.P.* AIR 1967 SC 1081. On the facts of this case there can be hardly any doubt that the purpose for which the land was acquired is a public purpose.”

85. In *Narayan Govind Gavate v. State of Maharashtra*²⁸ this Court held that development and utilization of land as residential industrial area qualified as “public purpose”. This Court held that :

“6. In writ petitions before the High Court, the submission that no public purpose existed was not pressed in view of the decision of this Court in *Somavanti Smt v. State of Punjab* AIR 1963 SC 151. In *Ramtanu Cooperative Housing Society Ltd. Shri v. State of Maharashtra* (1970) 3 SCC 323, acquisition of land for development of industrial areas and residential tenements for persons to live on industrial estates was held to be legally valid for a genuinely public purpose. This ground, therefore, need not detain us, although the appellants, who are owners of the properties acquired, have formally raised it also by means of the six appeals filed by them (Civil Appeals 1616-1621 of 1969). In agreement with the High Court, we hold that notifications under Section 4(1) of the Act were valid in all these cases.”

86. In *Arnold Rodricks v. State of Maharashtra*²⁹ the acquisition of land for development and utilization as industrial and residential area met the test of “public purpose”. This Court laid down thus :

“We may further take up the question of the validity of Section 3(f)(2). In our view it is not necessary to decide this point because we have come to the conclusion that the notifications issued under Sections 4 and 6 specified a public purpose; the purpose specified was “development and utilization of the said lands as industrial and residential areas”. In our opinion this purpose is a public purpose within the Land Acquisition Act as it stood before the amendment made by the Bombay Legislature and it is not necessary for the respondents to rely on the amendment to sustain the notification. .. It was urged before us that the State Government was not entitled to acquire property from A and give it to B. Reliance was placed on the decision of the Supreme Judicial Court of Massachusetts (204 Mass. 607) . But as pointed out by this Court, public purpose varies with the times and the prevailing conditions in localities, and in some towns like Bombay the conditions are such that it is imperative that the State should do all it can to increase the availability of residential and industrial sites. It is true that these residential and industrial sites will be ultimately allotted to members of the public and they would get individual benefit, but it is in the interest of the general community that these members of the public should be able to have sites to put up residential houses and sites to put up factories. The main idea in issuing the

impugned notifications was not to think of the private comfort or advantage of the members of the public but the general public good. At any rate, as pointed out in *Babu Barkva Thakur v. State of Bombay* [(1961) 1 SCR 128 at p 137] a very large section of the community is concerned and its welfare is a matter of public concern. In our view the welfare of a large proportion of persons living in Bombay is a matter of public concern and the notifications served to enhance the welfare of this section of the community and this is public purpose. In conclusion we hold that the notifications are valid and cannot be impugned on the ground that they were not issued for any public purpose.”

[Emphasis supplied]

87. In *Sooraram Pratap Reddy & Ors. v. District Collector, Ranga Reddy District & Ors*³⁰. this Court has considered concept of “eminent domain” and has referred to *Susette Kelo v. City of New London* 162 L.Ed 439 = 545 US 469 wherein it had been observed that “using eminent domain for economic development impermissibly blurs the boundary between the public and private takings” . Government’ s pursuit of a public purpose might benefit individual purpose. *Samuel Berman v. Andrew Parker*, 99 L.Ed 27, has also been referred to wherein it has been observed that public ownership cannot be said to be the sole method of promoting the public purposes of community redevelopment projects. Other decisions as to public domain have also been referred to. “Eminent domain” has been discussed thus :

“43. “Eminent domain” may be defined as the right or power of a sovereign State to take private property for public use without the owner’ s consent upon the payment of just compensation. It means nothing more or less than an inherent political right, founded on a common necessity and interest of appropriating the property of individual members of the community to the great necessities and common good of the whole society. It embraces all cases where, by the authority of the State and for the public good, the property of an individual is taken without his consent to be devoted to some particular use, by the State itself, by a corporation, public or private, or by a private citizen for the welfare of the public (American Jurisprudence, 2d, Vol. 26, pp. 638-39, Para 1; Corpus Juris Secundum, Vol. 29, p. 776, Para 1; Words and Phrases, Permanent Edition, Vol. 14, pp. 468-70).

“44. “Eminent domain” is thus inherent power of a governmental entity to take privately owned property, especially land and convert it to public use, subject to reasonable compensation for the taking (vide P. Ramanatha Aiyar’ s *Advanced Law Lexicon*, Vol. 2, p. 1575).

45. The term “eminent domain” is said to have originated by Grotius, legal scholar of the seventeenth century. He believed that the State possessed the power to take or destroy property for the benefit of the social unit, but he believed that when the State

so acted, it was obligated to compensate the injured property owner for his losses. In his well-known work *De Jure, Belli et Pacis*, the learned author proclaimed:

“The property of subject is under the eminent domain of the State, so that the State or he who acts for it may use, alienate and even destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of the other, but for the ends of public utility, to which ends those who founded civil society must be supposed to have intended the private ends should give way.”

46. Blackstone too believed that the State had no general power to take private property of landowners, except on the payment of a reasonable price. The right of the State or the sovereign to its or his own property is absolute while that of the subject or citizen to his property is only paramount. The citizen holds his property subject always to the right of the sovereign to take it for a public purpose. The power of eminent domain is merely a means to an end viz. larger public interest.

47. The power of eminent domain does not depend for its existence on a specific grant. It is inherent and exists in every sovereign State without any recognition thereof in the Constitution or in any statute. It is founded on the law of necessity. The power is inalienable. No legislature can bind itself or its successors not to exercise this power when public necessity demands it. Nor can it be abridged or restricted by agreement or contract.

48. Nichols in his classic book *Eminent Domain* defines it (eminent domain) as “the power of sovereign to take property for public use without the owner’s consent” .

49. Another constitutional expert (Cooley) in his treatise on the *Constitutional Limitations*, states:

“More accurately, it is the rightful authority which must rest in every sovereignty to control and regulate those rights of a public nature which pertain to its citizens in common and to appropriate and control individual property for the public benefit, as the public safety, convenience or necessity may demand.”

50. Willis in his well-known work *Constitutional Law* discusses two viewpoints as to exercise of power of eminent domain. The older and stricter view was that unless the property was dedicated for use by the public at large or a considerable section thereof, it would not be for public use or for public purpose. The modern and more liberal view, however, is that it is not an essential condition of public use that the property should be transferred to public ownership or for public use and it is sufficient that the public derives advantage from the scheme.

51. In *Fallbrook Irrigation District v. Bradley* 41 L Ed 369 : 164 US 112 (1896) an Act of California provided for the acquisition of lands whenever fifty landowners or a majority of them in a particular locality required it for construction of a watercourse, the object of the legislation being to enable dry lands to be brought under wet cultivation. The validity of the Act was challenged on the ground that the acquisition would only benefit particular landowners who could take water from the channel and the public as such had no direct interest in the matter and consequently there was no public user. The contention was right if narrow view was to be accepted but was not well founded if liberal view was to be adopted. Rejecting the contention, the Court observed: (L Ed pp. 389-90)

“To irrigate and thus to bring into possible cultivation these large masses of otherwise worthless lands would seem to be a public purpose and a matter of public interest, not confined to the landowners, or even to any one section of the State. The fact that the use of the water is limited to the landowners is not, therefore, a fatal objection to this legislation. It is not essential that the entire community, or even any considerable portion thereof, should directly enjoy or participate in an improvement in order to constitute a public use. ...It is not necessary, in order that the use should be public, that every resident in the district should have the right to the use of the water”

(emphasis supplied)

The above statement of law was reiterated in subsequent cases.

52. In *Rindge Co. v. County of Los Angeles* 67 L Ed 1186 : 262 US 700 (1922) the Court observed that: (L Ed p.

“... It is not essential that the entire community, nor even any considerable portion, should directly enjoy or participate in an improvement in order to constitute a public use” .

53. In *New York City Housing Authority v. Muller* 270 NYP 333 : 105 ALR 905 certain lands were acquired in pursuance of a governmental project for clearing slums and providing housing accommodation to persons with low income. The validity of the acquisition was questioned on the ground that the use was private and not public. The Court, however, rejected the contention and stated:

“Over many years and in a multitude of cases the courts have vainly attempted to define comprehensively the concept of a public use; and to formulate a universal test even though it were possible, would in an inevitably changing world be unwise if not futile.” and holding that those purposes were for the benefit of the public the Court went on to observe:

“It is also said that since the taking is to provide apartments to be rented to a class designated as persons of low income or to be leased or sold to limited dividend corporations the use is private and not public. This objection disregards the primary purpose of the legislation. Use of a proposed structure, facility or service by everybody and anybody is one of the abandoned, universal tests of a public use.”

(emphasis supplied)

54. In *Murray v. LaGuardia* 291 NY 320 a town corporation was formed for acquiring certain lands. It was financed by Metropolitan Insurance Company which held all the stocks of the corporation. The owners of the lands contended that the scheme was to benefit only few individuals and the Insurance Company which was a private corporation and there was no public use in the project. The Court, however, rejected the argument. Dealing with the contention that there was no public use in the project because the Insurance Company was benefited, the Court observed:

“Nor do we find merit in the related argument that unconstitutionality results from the fact that in the present case the statute permits the city to exercise the power of ‘eminent domain’ to accomplish a project from which ‘Metropolitan’, a private corporation may ultimately reap a profit. If upon completion of the project the public good is enhanced it does not matter that private interests may be benefited.”

(emphasis supplied)

55. In *Samuel Berman v. Andrew Parker* 99 L Ed 27 : 348 US 26, owners instituted an action of condemnation of their property under the District of Columbia Redevelopment Act, 1945. Plans were approved and the Planning Commission certified them to the agency for execution. The agency undertook the exercise of redevelopment of the area. It was contended by the landowners that the project was not public project and their property could not be acquired. Rejecting the contention, the Court observed that it does not sit to determine whether a particular housing project is or is not desirable.

56. The concept of public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as also healthy, spacious as also clean, well balanced as also carefully patrolled. According to the Court, the Congress and its authorised agencies have made determinations that take into account a wide variety of values and it was not for the Court to reappraise them:

“... If those who govern the District of Columbia decide that the nation’s capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.” (Samuel Berman case 99 L Ed 27, L Ed p.38 : 348 US 26)

57. Dealing with the contention that the project was undertaken by one businessman for the benefit of another businessman, the Court observed: (Samuel Berman case [supra])

“The public end may be as well or better served through an agency of private enterprise than through a department of government—or so the Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects. What we have said also disposes of any contention concerning the fact that certain property owners in the area may be permitted to repurchase their properties for redevelopment in harmony with the overall plan. That, too, is a legitimate means which Congress and its agencies may adopt, if they choose.”

(emphasis supplied)

58. In *Hawaii Housing Authority v. Midkiff* 81 L Ed 2d 186 : 467 US 229 (1984) the Court held that, no doubt there is a role for courts to play in reviewing a legislature’s judgment of what constitutes a public use, even when the eminent domain power is equated with the police power. But the Court in *Berman* (supra) made clear that it is “extremely narrow”. The Court emphasised that any departure from this judicial restraint would result in courts deciding on what is and what is not a governmental function and in their invalidating legislation on the basis of their view on that question. And the court would not substitute its judgment for a legislature’s judgment as to what constitutes a public use “unless the use be palpably without reasonable foundation” .

59. Recently, in *Susette Kelo v. City of New London* 162 L Ed 439 : 545 US 469 the landowners challenged the city’s exercise of eminent domain power on the ground that it was not for public use. The project in question was a community project for economic revitalisation of the city of New London for which the land was acquired. It was submitted by the learned counsel for the respondents that the facts in *Kelo* (supra) were similar to the facts of the present case. For that the counsel relied upon the integrated development project. Dealing with the project, the Court stated: [*Kelo* case (supra)]

“The Fort Trumbull area is situated on a peninsula that juts into Thames River. The area comprises approximately 115 privately owned properties, as well as the 32 acres of land formerly occupied by the naval facility (Trumbull State Park now occupies 18 of those 32 acres). Parcel 1 is designated for a waterfront conference hotel at the center of a ‘small urban village’ that will include restaurants and shopping. This parcel will also have marinas for both recreational and commercial uses. A pedestrian ‘riverwalk’ will originate here and continue down the coast, connecting the waterfront areas of the development. Parcel 2 will be the site of approximately 80

new residences organised into an urban neighbourhood and linked by public walkway to the remainder of the development, including the State park. This parcel also includes space reserved for a new US Coast Guard Museum. Parcel 3, which is located immediately north of the Pfizer facility, will contain at least 90,000 sqft of research and development office space. Parcel 4A is a 2.4 acre site that will be used either to support the adjacent State park, by providing parking or retail services for visitors, or to support the nearby marina. Parcel 4B will include a renovated marina, as well as the final stretch of the riverwalk. Parcels 5, 6 and 7 will provide land for office and retail space, parking, and water-dependent commercial uses.” The Court also stated:

“Two polar propositions are perfectly clear. On the one hand, it has long been accepted that the sovereign may not take the property of A for the sole purpose of transferring it to another private party B, even though A is paid just compensation. On the other hand, it is equally clear that a State may transfer property from one private party to another if future ‘use by the public’ is the purpose of the taking; the condemnation of land for a railroad with common-carrier duties is a familiar example.”

The Court noted the contention of the petitioners that “using eminent domain for economic development impermissibly blurs the boundary between public and private takings” . It also conceded that quite simply, the Government’ s pursuit of a public purpose might benefit individual private parties, but rejected the argument by stating:

“When the legislature’ s purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of other kinds of socio-economic legislation are not to be carried out in the Federal Courts.”

60. The Court reiterated: (Samuel Berman case (supra) “The public end may be as well or better served through an agency of private enterprise than through a department of government—or so the Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects.”

61. The above principles have been accepted and applied in India also. Immediately after the Constitution came into force, this Court had an occasion to consider the power of eminent domain in the leading case of Charanjit Lal Chowdhury v. Union of India AIR 1951 SC 41 : 1950 SCR 869. Referring to the doctrine of eminent domain in the American legal system, Mukherjea, J. (as His Lordship then was) stated: (Charanjit Lal case (supra)

“48. It is a right inherent in every sovereign to take and appropriate private property belonging to individual citizens for public use. This right, which is described as eminent domain in American law, is like the power of taxation, and offspring of

political necessity, and it is supposed to be based upon an implied reservation by Government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner.”

62. In *Commr. & Collector v. Durganath Sarma* AIR 1968 SC 394 : (1968) 1 SCR 561 drawing distinction between police power and power of eminent domain, this Court observed: (SCC p. 399, para 9)

“9. ... In the exercise of its eminent domain power the State may take any property from the owner and may appropriate it for public purposes. The police and eminent domain powers are essentially distinct. Under the police power many restrictions may be imposed and the property may even be destroyed without compensation being given, whereas under the power of eminent domain, the property may be appropriated to public use on payment of compensation only.”

63. In *Coffee Board v. CCT* (1988) 3 SCC 263 referring to American authorities, Mukharji, J. (as His Lordship then was) stated: (SCC p. 282, para 29)

“29. ... It is trite knowledge that eminent domain is an essential attribute of sovereignty of every State and authorities are universal in support of the definition of eminent domain as the power of the sovereign to take property for public use without the owner’s consent upon making just compensation.”

64. In *Scindia Employees’ Union v. State of Maharashtra* (1996) 10 SCC 150 this Court observed: (SCC p. 152, para 4)

“4. ... The very object of compulsory acquisition is in exercise of the power of eminent domain by the State against the wishes or willingness of the owner or person interested in the land. Therefore, so long as the public purpose subsists the exercise of the power of eminent domain cannot be questioned. Publication of declaration under Section 6 is conclusive evidence of public purpose. In view of the finding that it is a question of expansion of dockyard for defence purpose, it is a public purpose.”

65. In *Sharda Devi v. State of Bihar* (2003) 3 SCC 128 this Court said: (SCC p. 144, para 27)

“27 ... The power to acquire by the State the land owned by its subjects hails from the right of eminent domain vesting in the State which is essentially an attribute of sovereign power of the State. So long as the public purpose subsists, the exercise of the power by the State to acquire the land of its subjects without regard to the wishes or willingness of the owner or person interested in the land cannot be questioned.”

88. The definition of “Public purpose” as amended in 1984 has been considered in Sooraram Pratap Reddy (supra) thus :

“67. The expression “public purpose” is of very wide amplitude. It is merely illustrative and not exhaustive. The inclusive definition does not restrict its ambit and scope. Really, the expression is incapable of precise and comprehensive definition. And it is neither desirable nor advisable to attempt to define it. It is used in a generic sense of including any purpose wherein even a fraction of the community may be interested or by which it may be benefited.

68. We may also refer to few decisions wherein the expression came up for consideration of courts.

69. Before about a century, in *Hamabai Framjee Petit v. Secy. of State for India in Council AIR 1914 PC 20* certain lands were sought to be acquired for erecting buildings for the use of government officials. The action was challenged in the High Court of Judicature at Bombay contending that the purpose of acquisition could not be said to be “public purpose” . Negating the arguments and upholding the acquisition, Batchelor, J. observed: (Hamabai case).

“... ‘General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase “public purposes” in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.’

”

(emphasis supplied)

The aggrieved appellant approached the Privy Council. The Council in *Hamabai Framjee Petit v. Secy. of State for India in Council AIR 1914 PC 20* approved the above observations of Batchelor, J. Speaking for the Judicial Committee, Lord Dunedin stated: (IA p. 47)

“ . all that remains is to determine whether the purpose here is a purpose in which the general interest of the community is concerned. Prim a facie the Government are good judges of that. They are not absolute judges. They cannot say: ‘Sic volo sic jubeo\ but at least a court would not easily hold them to be wrong. But here, so far from holding them to be wrong, the whole of the learned Judges, who are thoroughly conversant with the conditions of Indian life, say that they are satisfied that the scheme is one which will redound to public benefit by helping the Government to maintain the efficiency of its servants. From such a conclusion Their Lordships would be slow to differ, and upon its own statement it commends itself to their judgment.”

(emphasis supplied)

70. In *Veeraraghavachariar v. Secy. of State for India (Supra)* certain vacant sites were acquired for enabling panchamas to build houses. It was argued that this was not a public purpose as the benefits of the acquisition were to go only to few individuals. The contention was rejected by the Court observing that it is not possible to define what a public purpose is. There can be no doubt that provision of house sites for poor people is a public purpose for it benefits a large class of people and not one or two individuals.

71. In *State of Bihar v. Kameshwar Singh AIR 1952 SC 252* a Constitution Bench of this Court was examining vires of certain provisions of the Bihar Land Reforms Act, 1950 and other State laws in the context of Article 31 of the Constitution (as then stood). The constitutional validity was challenged on the ground that the Act failed to provide for compensation and there was lack of public purpose. The Court, however, negated the contention. As to “public purpose”, Mahajan, J. (as His Lordship then was), observed: (Kameshwar Singh case [supra])

“208. ... The expression ‘public purpose’ is not capable of a precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs. The point to be determined in each case is whether the acquisition is in the general interest of the community as distinguished from the private interest of an individual.” (emphasis supplied)

In the concurring judgment, S.R. Das, J. (as His Lordship then was) stated: (Kameshwar Singh case (supra), AIR p. 290, para 106)

“106. From what I have stated so far, it follows that whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose. With the onward march of civilisation our notions as to the scope of the general interest of the community are fast changing and widening with the result that our old and narrower notions as to the sanctity of the private interest of the individual can no longer stem the forward flowing tide of time and must necessarily give way to the broader notions of the general interest of the community. The emphasis is unmistakably shifting from the individual to the community. This modern trend in the social and political philosophy is well reflected and given expression to in our Constitution.”

(emphasis supplied)

72. In *State of Bombay v. Ali Gulshan AIR 1955 SC 810* a Constitution Bench of this Court considered vires of the Bombay Land Requisition Act, 1948 (Act 23 of 1948). Interpreting provisions of the Constitution and Schedule VII thereof, the Court

held that requisition of property by the Government of Bombay for accommodation of foreign consulate could be said to be “public purpose” . It was held that every State purpose or Union purpose is a public purpose but there may be acquisition or requisition which is neither for the State nor for the Union and yet it may be for a “public purpose” ; for instance, acquisition for construction of hospital or educational institution by a private individual or institution.

73. In *State of Bombay v. R.S. Nanji* AIR 1956 SC 294 land was requisitioned for accommodating employees of Road Transport Corporation. It was contended that there was no “public purpose” and hence the action was illegal. Referring to *Hamabai*(supra), *Ali Gulshan* AIR 1955 SC 810 and *State of Bombay v. Bhanji Munji* AIR 1955 SC 41, the Constitution Bench stated that the expression “public purpose” must be decided in each case examining closely all the facts and circumstances of the case. On the facts of the case, it was held that a breakdown in the organisation of the Corporation, leading to dislocation of the road transport system would create a chaotic condition to the detriment of the interest of the community. Providing living accommodation for its employees is a statutory activity of the Corporation and it is essential for the Corporation to provide such accommodation in order to ensure an efficient working of the road transport system and it must, therefore, be held to be “public purpose” .

74. In the leading case of *Somawanti v. State of Punjab* AIR 1963 SC 151 certain lands were acquired by the Government for public purpose viz. for setting up a factory for manufacturing various ranges of refrigeration compressors and ancillary equipments. It was contended that acquisition was not for “public purpose” and hence it was unlawful.

75. Interpreting inclusive definition of “public purpose” in the Act, *Mudholkar, J.* stated: (*Somawanti case*, AIR p. 161, para 24)

“24. ... This is an inclusive definition and not a compendious one and, therefore, does not assist us very much in ascertaining the ambit of the expression ‘public purpose’ . Broadly speaking the expression ‘public purpose’ would, however, include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.” It was also observed that “public purpose” is bound to vary with the times and the prevailing conditions in a given locality and, therefore, it would not be a practical proposition even to attempt a comprehensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose.

76. In *Arnold Rodricks v. State of Maharashtra* AIR 1966 SC 1788 this Court held that the phrase “public purpose” has no static connotation, which is fixed for all

times. It is also not possible to lay down a definition of what public purpose is, as the concept of public purpose may change from time to time. It, however, involves in it an element of general interest of the community which should be regarded as a public purpose.

77. In *Bhim Singhji v. Union of India* (1981) 1 SCC 166 this Court held that the concept of public purpose implies that acquisition or requisition of property is in the interest of general public and the purpose for which such acquisition or requisition is made directly and vitally subserves public interest.

78. Recently, in *Daulat Singh Surana v. Collector (L.A.)* (2007) 1 SCC 641 land was sought to be acquired for construction of office of the Deputy Commissioner of Police (Security Control). It was contended that there was no element of public purpose and hence the acquisition was not in accordance with law. Negating the contention and upholding the acquisition, the Court held that the expression “public purpose” includes a public purpose in which greatest interest of the community as opposed to a particular interest of an individual is directly concerned. The concept is not static but changes with the passage of time. Power of eminent domain can, therefore, be exercised by the State in public interest.

79. A “public purpose” is thus wider than a “public necessity” . Purpose is more pervasive than urgency. That which one sets before him to accomplish, an end, intention, aim, object, plan or project, is purpose. A need or necessity, on the other hand, is urgent, unavoidable, compulsive. “Public purpose should be liberally construed, not whittled down by logomachy.”

(emphasis supplied)

80. In *State of Karnataka v. Ranganatha Reddy* (1977) 4 SCC 471 Krishna Iyer, J. stated: (SCC p. 502, para 57)

“57. ... There may be many processes of satisfying a public purpose. A wide range of choices may exist. The State may walk into the open market and buy the items, movable and immovable, to fulfil the public purpose; or it may compulsorily acquire from some private person’s possession and ownership the articles needed to meet the public purpose; it may requisition, instead of resorting to acquisition; it may take on loan or on hire or itself manufacture or produce. All these steps are various alternative means to meet the public purpose. The State may need chalk or cheese, pins, pens or planes, boats, buses or buildings, carts, cars, or eating houses or any other of the innumerable items to run a welfare-oriented administration or a public corporation or answer a community requirement. If the purpose is for servicing the public, as governmental purposes ordinarily are, then everything desiderated for subserving such public purpose falls under the broad and expanding rubric. The nexus between the taking of property and the public purpose springs necessarily into

existence if the former is capable of answering the latter. On the other hand, if the purpose is a private or non-public one, the mere fact that the hand that acquires or requires is Government or a public corporation, does not make the purpose automatically a public purpose. Let us illustrate. If a fleet of cars is desired for conveyance of public officers, the purpose is a public one. If the same fleet of cars is sought for fulfilling the tourist appetite of friends and relations of the same public officers, it is a private purpose. If bread is 'seized' for feeding a starving section of the community, it is a public purpose that is met but, if the same bread is desired for the private dinner of a political maharajah who may pro tem fill a public office, it is a private purpose. Of course, the thing taken must be capable of serving the object of the taking. If you want to run bus transport you cannot take buffaloes"

81. As observed by Bhagwati, J. (as His Lordship then was) in *National Textile Workers' Union v. P.R. Ramakrishnan* (1983) 1 SCC 228 the law must adapt itself with the changing socio-economic context. His Lordship said: (SCC p. 255, para 9)

"9. ... We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand along with the tree, it will either choke the tree or if it is a living tree, it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast changing society and not lag behind."

(emphasis supplied)

82. Finally, we may refer to the Tenth Report of the Law Commission of India on "The Law of Acquisition and Requisitioning of Land" wherein the Law Commission considering the meaning of "public purpose" under the Act, stated:

"37. (a) Public purpose.—Public purpose is not defined in the Act. There is only an inclusive definition which relates to village sites in districts. In other respects, there is no indication in the Act of any test for determining whether a purpose is a public purpose or not. A large number of suggestions have been received by us urging that we should clearly and exhaustively define the term 'public purpose'. In an ever-changing world, the connotation of the expression 'public purpose' must necessarily change. If a precise definition is enacted, it would become rigid and leave no room for alteration in the light of changing circumstances. It would leave no room for the courts to adjust the meaning of the expression according to the needs of the times"

(emphasis supplied)

Referring to leading authorities on eminent domain and “public purpose” , the Commission observed:

“38. ... It is, in our view, neither possible nor expedient to attempt an exhaustive definition of public purposes. The only guiding rule for the determination of its meaning is that the proposed acquisition or requisition should tend to promote the welfare of the community as distinct from the benefit conferred upon an individual. The mere fact that the immediate use is to benefit a particular individual would not prevent the purpose being a public one, if in the result it is conducive to the welfare of the community. The question is exhaustively discussed in *P. Thambiran Padayachi v. State of Madras* AIR 1952 Mad 756 by Venkatarama Aiyar, J. All that can, therefore, be attempted in a legislation of this kind is to provide an inclusive definition, so as to endow it with sufficient elasticity to enable the courts to interpret the meaning of the expression ‘public purpose’ according to the needs of the situation, and this is what we have attempted.”

This Court has observed in *Sooraram Pratap Reddy* (supra) that public purpose is of very wide amplitude. It has referred to *State of Bombay v. Ali Gulshan*³¹, where considering the public purpose it was held that there may be acquisition or requisition which is neither for the State nor for the Union yet it may be for public purpose. *Daulat Singh Surana & Ors. v. First Land Acquisition Collector & Ors*³². has also been referred to in which it has been laid down that public purpose includes a purpose in which the greatest interest is of community as opposed to particular interest of an individual is directly concerned. The concept is not static but changes with the passage of time. Power of eminent domain can therefore be exercised by the State only in public interest. The project in hand would have definitely served the public purpose and public purpose should be liberally construed, not whittled down by logomachy. It has been observed in *National Textile Workers’ Union v. P.R.Ramakrishnan & Ors*³³. that law must change with the changing social concepts and values. If the law fails to respond to needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must constantly be on the move adapting itself to the fast-changing society and not lag behind, that is, to adjust to the meaning of the expression according to the needs of the times in the matter of public purpose. That is the purpose behind the inclusive definition of public purpose in section 3(f) also.

89. This Court has again considered the public purpose in *NandKishore Gupta v. State of Uttar Pradesh and Ors*³⁴. On a consideration of various judgments in *Sooraram Pratap Reddy v. District Collector (Supra)* *JhanduLal v. State of Punjab (Supra)* and various other decisions, this Court has laid down thus:

“56. During the debate, our attention was invited to Section 3(f) of the Act, which contains a definition for “public purpose” . It was pointed out that where the acquisition is for the Company, it cannot amount to a public purpose. There can be no dispute about this proposition that where the acquisition of land is for the companies,

it cannot amount to a public purpose. It was, therefore, our endeavour to find out whether this land was for the Company and we are quite satisfied with a finding recorded by the High Court that this acquisition was not for the Company but was for the public purpose.

57. The Expressway is a work of immense public importance. The State gains advantages from the construction of an expressway and so does the general public. Creation of a corridor for fast-moving traffic resulting into curtailing the travelling time, as also the transport of the goods, would be some factors which speak in favour of the Project being for the public purpose. Much was stated about the 25 million sq m of land being acquired for the five parcels of land. In fact, in our opinion, as has rightly been commented upon by the High Court, the creation of the five zones for industry, residence, amusement, etc. would be complementary to the creation of the Expressway.

58. It cannot be forgotten that the creation of land parcels would give impetus to the industrial development of the State creating more jobs and helping the economy and thereby helping the general public. There can be no doubt that the implementation of the Project would result in coming into existence of five developed parcels/centres in the State for the use of the citizens. There shall, thus, be the planned development of this otherwise industrially backward area. The creation of these five parcels will certainly help the maximum utilisation of the Expressway and the existence of an Expressway for the fast-moving traffic would help the industrial culture created in the five parcels. Thus, both will be complimentary to each other and can be viewed as parts of an integral scheme. Therefore, it cannot be said that it is not a public purpose.

59. We must, at this stage, take into account the argument that the whole compensation is coming wholly from the Company and not from the Government or from YEIDA. The appellants invited our attention to Clause 4.1(d) of the Concession Agreement. On that basis, it was argued that the Company has paid the compensation cost and, therefore, the acquisition is clearly covered under Part VII of the Act, and there may be no public purpose if the acquisition is made for the Company and it is the Company who has to shell out the whole compensation. Now, this argument is clearly incorrect.

60. Even if we accept for the sake of argument that all this compensation is coming from the Company, we must firstly bear it in mind that the Company gets no proprietary or ownership rights over the Project assets. Now, if it is presumed that the compensation is coming from the Company, then it will have to be held that the whole assets would go to the Company. At least that is envisaged in Part VII of the Act. Here, that is not the case. The assets are to revert back to the acquiring body or, as the case may be, the Government. Even the lands which are utilised for the construction of the Expressway are to go back to the Government barely after 36 years i.e. after the Company has utilised its rights to recover the toll on the Expressway. Secondly, it must be borne in mind that the Concession

Agreement has been executed in February 2003, whereas the acquisition process started somewhere in the month of September 2007.

61. When the Concession Agreement was executed, the cost factor was not known. The acquiring body was only to make available the land to the concessionaire to implement the Project. There would be a number of difficulties arising, as for example, it would be clearly not contemplated that the land would be made available without any value or that there would be no scheme for the State Government for recovering the expenses that it would incur in obtaining the land. The learned counsel appearing for the State as also for the Company and YEIDA argued that in order to overcome and iron out such difficulties, the Agreement provides that the land would be leased on a premium equivalent to the acquisition cost. This argument proceeds on the basis of Clause 4.3(C) of the Concession Agreement. It is to be noted then that the premium of the land was not going to be just the acquisition cost, but also the lease rent of Rs. 100 per hectare. Therefore, the State Government was to earn Rs. 100 per hectare for the total acquired land, which was about 25 million sq m over and above the compensation to be decided. The mention of the compensation amount in addition to the lease money of Rs. 100 per hectare would clearly provide that the whole compensation was not going to be paid by the Company alone. This is apart from the fact that through this Agreement, only the extent of the compensation payable by the Company to YEIDA was decided. However, once all the amounts went to the coffers of YEIDA, it would lose its independent character as a premium. When it goes into the coffers of YEIDA, it is YEIDA which would make the payments of the estimated compensation and thereby it would be as if the compensation is paid not by the Company, but by YEIDA.

62. The respondents have relied on the law laid down in *Pratibha Nema case* (2003) 10 SCC 626, more particularly, paras 24 and 25 therein. The respondents also argued relying upon the decision in *Naihati Municipality v. Chinmoyee Mukherjee* (1996) 10 SCC 632. The respondents argued that the law laid down in *Pratibha Nema case* (supra) emanates from the judgment in *Naihati Municipality v. Chinmoyee Mukherjee* (supra).

63. Two judgments in *State of Karnataka v. All India Manufacturers Organisation* (2006) 4 SCC 683 and *Sooraram Pratap Reddy v. Collector* (2008) 9 SCC 552 were pressed in service

64. The first judgment in *State of Karnataka v. All India Manufacturers Organisation* (supra) pertain to Bangalore-Mysore Infrastructure Corridor Project. While considering what the public purpose was, this Court in paras 76, 77, 78 and 79 took stock of the contention, whereby it was suggested that land far away from the actual alignment of the road and periphery had been acquired and, therefore, even if the implementation of the Highway Project was assumed to be for the public purpose, the acquisition of the land far away therefrom would not amount to a public purpose nor

would it be covered by the provisions of the Karnataka Industrial Areas Development Act, 1966 (the KIAD Act).

65. In the present case also, it was argued that the lands which are being acquired for the interchange would not at all be necessary. Further, it was argued that the five parcels of land which are being acquired for the development of five industrial townships, could not be said to be for the public purpose nor could it be said to be a part of the present integrated scheme. This Court had refuted this argument holding that even in case of Bangalore-Mysore Highway Project, the lands even a little away from the main alignment of the road, had to be a part of this Project and the Project was an integrated infrastructure development project and not merely a highway project. It was conceived originally as the Bangalore-Mysore Infrastructure Corridor Project, which conceived of the development of roads between Bangalore and Mysore, for which there were several interchanges in and around the periphery of the city of Bangalore, together with numerous developmental infrastructure activities along with the highway at several points. The situation is no different in the present case. Therefore, the contention that this acquisition was not for public purpose, is rejected.

66. In *Sooraram Pratap Reddy v. Collector (supra)* the same question cropped up which has been mentioned in paras 9, 10 and 11 of the judgment suggesting that there was no public purpose and in fact, it was an acquisition for a private company under Part VII of the Act and, therefore, the power of eminent domain would have no application to such case. The contentions raised in that judgment in paras 16, 17 and 18 are almost similar to the contentions raised herein. The Court has extensively dealt with the question of public purpose in para 66 and has taken stock of practically all the cases till para 109 therein. It will not be necessary for us to repeat all the case law and the questions raised and considered in these paragraphs, such as industrial policy of the State, acquisition for Company, etc.

67. In fact, while considering the contention regarding the industrial policy of the State, the Court has taken into consideration the oft quoted case of *Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal (2007) 8 SCC 418* where this Court has come to the conclusion that in the absence of illegality or violation of law, a court of law will not interfere in the policy matters. Similar is the case here, where the development of the industrial infrastructure along the Expressway for the overall betterment of the region and further for the industrialisation of the otherwise backward region of Uttar Pradesh, was considered as a policy. In this judgment again, the Court has extensively considered the question as to whether and under what circumstances, the acquisition could be said to be the acquisition for the Company. In that, the Court has also considered the decision in *Babu Barkya Thakur v. State of Bombay AIR 1960 SC 1203*.

68. The Court quoted the observations in the aforementioned decision in *Babu Barkya Thakur v. State of Bombay* (supra) to the following effect: (AIR 1960 SC p. 1207, para 10)

“10. ... These requirements indicate that the acquisition for a company also is in substance for a public purpose inasmuch as it cannot be seriously contended that constructing dwelling houses, and providing amenities for the benefit of the workmen employed by it and construction of some work of public utility do not serve a public purpose.”

69. We have already considered this question that in the present case, there is nothing to indicate that the acquisition is for the Company i.e. for Jaiprakash Industries Ltd. It is only, therefore, that we are at pains to point out that the Government was only using the Company for implementing its policy.

70. In the aforementioned judgment of *Sooraram Pratap Reddy v. Collector* (supra), Hon' ble Thakker, J. has also referred to the decision in *Jhandu Lal v. State of Punjab* AIR 1961 SC 343 where the acquisition was for construction of houses by members of Thapar Industries Cooperative Housing Society Ltd., Yamuna Nagar. The challenge was that there was non-compliance with the provisions of Part VII of the Act, though the acquisition was for the Company under Part VII of the Act. The High Court, in that case, held that the acquisition was for a public purpose and there was no need to comply with the provisions of Part VII of the Act.

71. In fact, practically all the decisions on the subject of acquisition for the Company and public purpose have been considered in this judgment of *Sooraram Pratap Reddy v. Collector* (supra), which itself is a locus classicus. Ultimately, this Court came to the conclusion that the acquisition made by the State of Andhra Pradesh could not be faulted, as it was in pursuance of policy decision for development of the city of Hyderabad and in pursuance of that policy, an integrated project was taken up for development of the city of Hyderabad into a business-cum-leisure tourism infrastructure centre. The Court also came to the conclusion that Andhra Pradesh Infrastructure and Investment Corporation (APIIC) in the reported decision was a nodal agency like YEIDA in the present case which was to generate the revenue and help the development of infrastructure for industrialisation of the area. The Court also recognised that such instrumentality of the State would have the power of eminent domain. Like the present case, the Court held the Project to be an integrated and indivisible project. We have no doubt that in the present case also, the Expressway as well as the five parcels which are to be developed are part of an integrated and indivisible project.

72. In *Sooraram Pratap Reddy v. Collector* (supra) it has also been found that the entire amount of the compensation was to be paid by the State agency APIIC, just like in the present case, where the entire amount is to be paid by YEIDA, which agency is

working as a nodal agency for the execution of the Project. The Court has also found that where the power of eminent domain is exercised mala fide or for collateral purposes and dehors the Act or in an irrational or unreasonable manner or when the purpose is “no public purpose” and the fraud on statute is apparent, a writ court can undoubtedly interfere. It has been found very specifically here that the present matter is not suffering from the above defects.

73. In this judgment, the subject of eminent domain has been discussed and considered with thoroughness and all the ramifications of the principle of eminent domain have been discussed. We have already culled out the principles emanating from this decision in the earlier part of this judgment and even at the cost of repetition, we may say that this judgment is practically, the law-setter on the subject of eminent domain, as also on the other allied subjects of acquisition. The judgment has also explained the concept of “public purpose”, which has been held to be wider than “public necessity”. The judgment proceeds on a basis that merely because the benefit goes to a particular section of the society, the acquisition does not cease to be for the public purpose. It has been specifically held that where the State is satisfied about the existence of a public purpose, the acquisition would be governed by Part II of the Act, as has happened in the present matter.

74. The judgment in *Sooraram Pratap Reddy v. Collector (supra)* is an authoritative pronouncement on the mode of payment, as also on the construction of Sections 40 and 41 of the Act. In fact, this judgment is a complete answer to the argument of the appellants that this acquisition is not for public purpose.”

90. A conjoint reading of the provisions contained in sections 3(f), 6, other provisions of Part II and the provisions contained in Part VII of the Act makes it clear that there can be an acquisition for public purpose and ultimately land may go on lease or other mode of transfer to a company and in case the compensation is paid out of public revenue, it would be an acquisition for a public purpose under Part II and in case compensation is borne as per the agreement provided in section 41, it would be an acquisition under Part VII of the Act. Though acquisition for public purpose can also be for the purpose of industrialization or for a company in case setting up of the company has a public purpose behind it as provided in section 3(f) and payment of compensation for acquisition of land is made out of public revenue as per the provisions of section 6 as amended in 1984.

91. This Court in the decisions before the amendment of sections 3, 3(f) and 6 in 1984 in the pre-amended period in the cases of *Babu Barkya Thakur v. State of Bombay*³⁶, *Pandit Jhandu Lal v. State of Punjab, (Supra)* *R.L. Arora v. State of Uttar Pradesh*³⁷ *Somawanti v. State of Punjab (Supra)* *Jage Ram & Ors. v. State of Haryana & Ors. (Supra)* *Indrajeet C. Parekh v. State of Gujarat*³⁸ *Aflatoon v. Lt. Governor of Delhi (Supra)* *Bai Malimabu v. State of Gujarat & Ors.*³⁹ *Manubhai Jethalal Patel v. State of Gujarat*⁴⁰ *Srinivasa Cooperative House Building Society Ltd. v. Madam Gurumurthy Sastry & Ors.*⁴¹ in which notification was published on 8.2.1979; and *Mandir Sita Ramji v. Land Acquisition Collector & Ors.,(Supra)*

in which notifications under section 4 were published on 13.11.1959 and 13.3.1975 has taken the view that an acquisition for a company could also be for public purpose where the Government provides compensation out of public revenue. The contribution of the Government could even be small that is Rs.100/- or so. Though the contribution so made would have to be judged in the facts of the case by the doctrine of colorable exercise of power.

92.. Even after the amendments made in definition of “public purpose” in section 3(f) and other provisions of Part II and Part VII of the Act in the year 1984, where the acquisition was initiated after the amendment has been made, the amended provisions has been taken into consideration by this Court in various decisions referred to hereinafter.

93. In *Amarnath Ashram Trust Society & Anr. v. Governor of U.P. & Ors. (Supra)* which is a decision rendered post-amendment wherein this Court has observed thus :

“4. The appellant wants land adjacent to its school building for the purpose of a playground for its students. The land belongs to Respondent 5. So it tried to obtain it from Respondent 5 by offering a price higher than its market value but did not succeed. It, therefore, moved the State Government to acquire that land for it. The Government agreed and issued notification under Section 4 of the Land Acquisition Act on 1-8-1986 notifying its intention to acquire that land for a public purpose namely “playground of students of Amar Nath Vidya Ashram (Public School), Mathura” . Thereafter, inquiries under Section 5-A and under Rule 4 of the Land Acquisition (Company) Rules, 1963 were made. The Government also entered into an agreement with the appellant as required by Section 40(1) of the Act on 11-8-1987. It then issued a declaration under Section 6 on 4-9-1987 mentioning the fact that the report made under sub-rule (4) of Rule 4 of the Land Acquisition (Company) Rules, 1963 was considered by the Government that the Land Acquisition Committee constituted under Rule 3 of the said Rules was consulted, that the agreement entered between the appellant and the Governor was duly published that the Governor was satisfied that the land mentioned in the schedule is needed for construction of a playground for students of Amar Nath Vidya Ashram (Public School), Mathura by the Amar Nath Ashram Trust, Mathura. This acquisition of land was challenged by the owner by a writ petition filed in the Allahabad High Court. An interim order was passed directing the parties to maintain status quo as regards possession. During the pendency of the said petition, on 1-5-1992, the Government denotified the land from acquisition in exercise of its power under Section 48 of the Land Acquisition Act. The appellant challenged that notification by filing a writ petition in the High Court. The petition filed by the appellant and the one filed by the owner were heard together. The petition filed by the owner was dismissed as infructuous and the petition filed by the appellant was dismissed on the ground that the decision of the State Government to withdraw from the acquisition for the reason that the acquisition having been proclaimed as one for a public purpose a part of cost of acquisition was

required to be borne by the State and as no such provision was made, it was not likely to be sustained if challenged, cannot be said to be contrary or illegal.

6. It is now well established that if the cost of acquisition is borne either wholly or partly by the Government, the acquisition can be said to be for a public purpose within the meaning of the Act. But if the cost is entirely borne by the company then it is an acquisition for a company under Part VII of the Act. It was so held by this Court in *Jhandu Lal v. State of Punjab* AIR 1961 SC 343. This decision was relied upon by the learned counsel for the State to support his contentions but it is difficult to appreciate how it supports him. It is held in that case that it is not correct to say that no acquisition for a company for a public purpose can be made except under Part VII of the Act. In that case a part of the cost was to be borne by the Government and, therefore, it was held that it was not necessary to comply with the provisions of Part VII of the Act. Admittedly, in the present case the entire cost of acquisition is to be borne by the appellant-Society and, therefore, it is an acquisition for a company and not for a public purpose. That is also borne out by the notification issued under Section 6 of the Act which states “that the land mentioned in the schedule below is needed for the construction of playground for students of Amar Nath Vidya Ashram (Public School), Mathura in District Mathura by the Amar Nath Ashram Trust, Mathura” . Therefore, simply because in the notification issued under Section 4 of the Act it was stated that the land was needed for a public purpose, namely, for a playground for students of Amar Nath Vidya Ashram (Public School), Mathura, it cannot be said that the acquisition is for a public purpose and not under Chapter VII for the appellant-Society in view of subsequent events and the declaration made under Section 6. The learned counsel for the State also relied upon the decision of this Court in *Srinivasa Coop. House Building Society Ltd. v. Madam Gurumurthy Sastry* (1994) 4 SCC 675 wherein this Court has held (at p. 676, SCC Headnote) that though there is “no provision in the Act to say that when a land is required for a company, it may also be for a public purpose. However, even the acquisition for a company, unless utilisation of the land so acquired is integrally connected with public use, resort to the compulsory acquisition under Chapter VII cannot be had” . It was submitted on the basis of this observation that even in case of an acquisition for a company an element of public purpose has to be there and if for that reason it was believed by the Government that it was necessary for it to make substantial contribution from public revenue so as to avoid the charge of colourable exercise of powers, the decision of the Government to withdraw from the acquisition cannot be said to be arbitrary or illegal. The aforesaid observation was made by this Court in the context of requirement of Section 40 of the Act and they cannot be construed to mean that no land cannot (sic can) be acquired by the State Government without making substantial contribution towards the cost of acquisition. We cannot read something more in the said observation than what they were intended to convey. The provisions of Part VII and particularly the provisions regarding payment of the entire costs of the acquisition would otherwise become redundant.

9. In an acquisition under Part VII of the Act, position of the company or the body for which the land is acquired is quite different from that of the owner of the land. As a result of withdrawal from the acquisition whereas the owner of land is ordinarily not likely to suffer any prejudice or irreparable loss, the company for whose benefit the land was to be acquired, may suffer substantial loss.

10. However, it is not necessary to go into this larger question whether in such a case the State Government can withdraw from acquisition without the consent of the company as the justification given by the Government is otherwise not sustainable. As stated earlier the reason given by the Government for withdrawing from the acquisition is that as no part of the cost of acquisition was to be borne by the Government the acquisition could not have been sustained as for a public purpose. We have already pointed out that in this case the acquisition was not for a public purpose but it was an acquisition for a company under Chapter VII of the Act. In respect of an acquisition for a company under Chapter VII of the Act law does not require that the State should also bear some cost of acquisition to make it an acquisition for public use. Thus the decision of the Government to withdraw from acquisition was based upon a misconception of the correct legal position. Such a decision has to be regarded as arbitrary and not bona fide. Particularly in a case where as a result of a decision taken by the Government the other party is likely to be prejudicially affected, the Government has to exercise its power bona fide and not arbitrarily. Even though Section 48 of the Act confers upon the State wide discretion it does not permit it to act in an arbitrary manner. Though the State cannot be compelled to acquire land compulsorily for a company its decision to withdraw from acquisition can be challenged on the ground that power has been exercised mala fide or in an arbitrary manner. Therefore, we cannot accept the submission of the learned counsel for the State that the discretion of the State Government in this behalf is absolute and not justiciable at all.”

(emphasis supplied)

94. This Court has laid down that in case cost of acquisition is borne either wholly or partly by the Government, the acquisition can be said to be for a public purpose. If the cost is entirely borne by the company then the acquisition is for a company under Part VII of the Act.

95. In *Pratibha Nema & Ors. v. State of M.P. & Ors.(Supra)* considering the amended provisions it was observed :

“6. In order to appreciate the contentions set out above in a proper perspective, it would be appropriate to advert to certain basic provisions of the Act and recapitulate the well-settled principles relating to public purpose and acquisition of land under Part II and Part VII of the Act. Section 4(1) which occurs in Part II of the Act contemplates a notification to be published in the Official Gazette etc. whenever it

appears to the appropriate Government that land in any locality is needed for any public purpose or for a company. Thereupon, various steps enumerated in sub-section (2) could be undertaken by the authorized officer. There is an inclusive definition of “public purpose” in clause f) of Section

3. This clause was inserted by Central Act 68 of 1984. Many instances of public purpose specified therein would have perhaps been embraced within the fold of public purpose as generally understood. Maybe, by way of abundant caution or to give quietus to legal controversies, the inclusive definition has been added. One thing which deserves particular notice is the rider at the end of clause (f) by which the acquisition of land for companies is excluded from the purview of the expression “public purpose”. However, notwithstanding this dichotomy, speaking from the point of view of public purpose, the provisions of Part II and Part VII are not mutually exclusive as elaborated later.

7. The concept of public purpose (sans inclusive definition) was succinctly set out by Batchelor, J. in a vintage decision of the Bombay High Court. In *Hamabai Framjee Petit v. Secy. of State for India* AIR 1914 PC 20 the Privy Council quoted with approval the following passage from the judgment of Batchelor, J.: (AIR p. 21)

“General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase ‘public purposes’ in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.”

8. The Privy Council then proceeded to observe that *prima facie* the Government are good judges to determine the purpose of acquisition i.e. whether the purpose is such that the general interest of the community is served. At the same time, it was aptly said that they are not absolute judges. This decision of the Privy Council and the words of Batchelor, J. were referred to with approval by a Constitution Bench in *Somawanti v. State of Punjab*, AIR 1963 SC 151 and various other decisions of this Court.

9. We may now advert to Section 6. It provides for a declaration to be made by the Government or its duly authorized officer that a particular land is needed for a public purpose or for a company when the Government is satisfied after considering the report, if any, made under Section 5-A(2). It is explicitly made clear that such declaration shall be subject to the provisions of Part VII of the Act which bears the chapter heading “Acquisition of Land for Companies”. Thus, Section 6 reiterates the apparent distinction between acquisition for a public purpose and acquisition for a company. There is an important and crucial proviso to Section 6 which has a bearing

on the question whether the acquisition is for a public purpose or for a company. The second proviso lays down 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 2 then makes it clear that where the compensation to be awarded 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. Thus, a provision for payment of compensation, wholly or partly, out of public revenues or some fund controlled or managed by a local authority is sine qua non for making a declaration to the effect that a particular land is needed for a public purpose. Even if a public purpose is behind the acquisition for a company, it shall not be deemed to be an acquisition for a public purpose unless at least part of the compensation is payable out of public revenues which includes the fund of a local authority or the funds of a corporation owned or controlled by the State. However, it was laid down in *Somawanti* case (supra) that the notification under Section 6(1) need not explicitly set out the fact that the Government had decided to pay a part of the expenses of the acquisition or even to state that the Government is prepared to make a part of contribution to the cost of acquisition. It was further clarified that the absence of a provision in the budget in respect of the cost of acquisition, whole or part, cannot affect the validity of the declaration. The majority Judges of the Constitution Bench also clarified that a contribution to be made by the State need not be substantial and even the token contribution of Rs100 which was made in that case satisfied the requirements of the proviso to Section 6(1). The contribution of a small fraction of the total probable cost of the acquisition does not necessarily vitiate the declaration on the ground of colourable exercise of power, according to the ruling in the said case. Following *Somawanti* (supra), the same approach was adopted in *Jage Ram v. State of Haryana* (1971) 1 SCC 671. The question, whether the contribution of a nominal amount from the public exchequer would meet the requirements of the proviso to Section 6, had again come up for consideration in *Manubhai Jehtalal Patel v. State of Gujarat* (1983) 4 SCC 553. D.A. Desai, J. after referring to *Somawanti* (supra), speaking for the three-Judge Bench observed thus: (SCC p. 555, para 4)

“It is not correct to determine the validity of acquisition keeping in view the amount of contribution but the motivation for making the contribution would help in determining the bona fides of acquisition. Further in *Malimabu* case (1978) 2 SCC 373 contribution of Re 1 from the State revenue was held adequate to hold that acquisition was for public purpose with State fund. Therefore, the contribution of Re 1 from public exchequer cannot be dubbed as illusory so as to invalidate the acquisition.”

10. In Somawanti case (supra) the following note of caution was sounded: (AIR p. 169, para 52)

“We would, however, guard ourselves against being understood to say that a token contribution by the State towards the cost of acquisition will be sufficient compliance with the law in each and every case. Whether such contribution meets the requirements of the law would depend upon the facts of every case. Indeed the fact that the State’s contribution is nominal may well indicate, in particular circumstances, that the action of the State was a colourable exercise of power. In our opinion ‘part’ does not necessarily mean a substantial part and that it will be open to the Court in every case which comes up before it to examine whether the contribution made by the State satisfies the requirement of the law. In this case we are satisfied that it satisfies the requirement of law.”

11. A three-Judge Bench of this Court in *Indrajit C. Parekh v. State of Gujarat* (1975) 1 SCC 824 without much of elaboration, relegated the observations in the above passage to very narrow confines by stating thus: (SCC p. 827, para 3)

“In view of the decision in this case that a nominal contribution out of public revenues would satisfy the requirement of the proviso to Section 6(1) the observation ‘whether such contribution meets the requirement of the law would depend upon the facts of every case’ must necessarily be taken to refer to the requirement of some law other than the proviso to Section 6(1). No such law was pointed out to us; and it is not necessary for the purposes of this appeal to enter on a discussion as to what such other law could be.”

12. Another important provision is sub-section (3) of Section 6 which enjoins that the declaration (required to be published in the Official Gazette etc.) shall be conclusive evidence that the land is needed for a public purpose or for a company and on publication of declaration, the appropriate Government is enabled to acquire the land in accordance with the other provisions of the Act. This sub-section came up for interpretation of this Court in Somawanti case (supra). The Court emphasised that the conclusiveness contemplated by sub-section (3) is not merely regarding the satisfaction of the Government on the question of need but also with regard to the question that the land is needed for a public purpose or for a company, as the case may be. However, the learned Judges highlighted an important exception to the finality or conclusiveness of the declaration under Section 6(1). It was observed thus: (AIR p. 164, para 36)

“That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside for a moment the purpose of a

company. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception, the declaration of the Government will be final.”

13. The main contention of the learned Senior Counsel for the appellant, as already noticed, rests on the plea of colourable exercise of power.

14. Colourable exercise of power or mala fides in the province of exercise of power came up for discussion in *State of Punjab v. Gurdial Singh* (1980) 2 SCC 471. In the words of Krishna Iyer, J.: (SCC p. 475, para 9)

“Pithily put, bad faith which invalidates the exercise of power – sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions – is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. ... When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. . Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.”

15. The above exposition of law unfolds the right direction or the line of enquiry which the court has to pursue to test the validity of declaration made under Section 6(1) exalted by the legal protection accorded to it under sub-section (3).

16. In order to proceed on these lines, the ambit and contours of public purpose as understood by this Court in certain decided cases has to be taken note of. We have already noticed the broad and general meaning of the expression “public purpose” as stated by Batchelor, J. nearly a century back. In the particular context of setting up industries by private enterprise, this Court’ s perspective of public purpose is discernible from certain decided cases to which we shall make reference.

17. In *Jage Ram* case (supra) the public purpose mentioned in the notifications under Sections 4 and 6 was “the setting up of a factory for the manufacture of Chinaware and porcelain ware” . The State Government had contributed a sum of Rs 100 as was done in the case of *Somawanti* (supra) towards the cost of the land. The question arose whether it was necessary for the Government to proceed with the acquisition under Part VII of the Act. Holding that acquisition under Part VII need not have been

resorted to, this Court proceeded to discuss the question whether the acquisition was intended for a public purpose. K.S. Hegde, J. speaking for the Court observed thus: (SCC p. 674, para 8)

“8. There is no denying the fact that starting of a new industry is in public interest. It is stated in the affidavit filed on behalf of the State Government that the new State of Haryana was lacking in industries and consequently it had become difficult to tackle the problem of unemployment. There is also no denying the fact that the industrialization of an area is in public interest. That apart, the question whether the starting of an industry is in public interest or not is essentially a question that has to be decided by the Government. That is a socio-economic question. This Court is not in a position to go into that question. So long as it is not established that the acquisition is sought to be made for some collateral purpose, the declaration of the Government that it is made for a public purpose is not open to challenge. Section 6(3) says that the declaration of the Government that the acquisition made is for public purpose shall be conclusive evidence that the land is needed for a public purpose. Unless it is shown that there was a colourable exercise of power, it is not open to this Court to go behind that declaration and find out whether in a particular case the purpose for which the land was needed was a public purpose or not: see *Somawanti v. State of Punjab* (supra) and *Raja Anand Brahma Shah v. State of U.P.*, AIR 1967 SC 1081. On the facts of this case there can be hardly any doubt that the purpose for which the land was acquired is a public purpose.”

18. In *Somawanti* case (supra) setting up a factory for the manufacture of refrigeration compressors and ancillary equipment, was held to subserve public purpose. The importance of such industry to a State such as Punjab which had surplus food and dairy products, the possible generation of foreign exchange resources and employment opportunities were all taken into account to hold that public purpose was involved in establishing the industry. It was observed: (AIR p. 169, para 55)

“55. On the face of it, therefore, bringing into existence a factory of this kind would be a purpose beneficial to the public even though that is a private venture. ”

The decision in *Jage Ram* case (supra) was cited with approval by this Court in *Bajirao T. Kote v. State of Maharashtra* (1995) 2 SCC 442. In *R.L. Arora v. State of U.P.* AIR 1964 SC 1230 a Constitution Bench of this Court observed that there was a definite public purpose behind the acquisition of land for taking up works in connection with the setting up of a factory for production of textile machinery parts. However, that was in the context of a case of acquisition under Part VII.

19. These decisions establish that a public purpose is involved in the acquisition of land for setting up an industry in the private sector as it would ultimately benefit the people. However, we would like to add that any and every industry need not necessarily promote public purpose and there could be exceptions which negate the

public purpose. But, it must be borne in mind that the satisfaction of the Government as to the existence of public purpose cannot be lightly faulted and it must remain uppermost in the mind of the court.

20. Having noted the salient provisions and the settled principles governing the acquisition for a public purpose, it is time to turn to Part VII dealing with acquisition of land for companies. The important point which we would like to highlight at the outset is that the acquisition under Part VII is not divorced from the element of public purpose. The concept of public purpose runs through the gamut of Part VII as well.

21. “Company” is defined to mean by Section 3(e) as: (i) a company within the meaning of Section 3 of the Companies Act other than a government company, (ii) a society registered under the Societies Registration Act other than a cooperative society referred to in clause (cc), and (iii) a cooperative society governed by the law relating to the cooperative societies in force in any State other than a cooperative society referred to in clause (cc). An industrial concern employing not less than 100 workmen and conforming to the other requirements specified in Section 38-A is also deemed to be a company for the purposes of Part VII. In order to acquire land for a company as defined above, the previous consent of the appropriate Government is the first requirement and secondly, the execution of agreement by the company conforming to the requirements of Section 41 is another essential formality. Section 40 enjoins that consent should not be given by the appropriate Government unless it is satisfied that: (1) the purpose of the acquisition is to obtain land for erection of dwelling houses for workmen or for the provision of amenities connected therewith; (2) that the acquisition is needed for construction of some building or work for a company which is engaged or about to engage itself in any industry or work which is for a public purpose; and (3) that the proposed acquisition is for the construction of some work that is likely to be useful to the public. The agreement contemplated by Section 41 is meant to ensure the compliance with these essentialities. It is also meant to ensure that the entire cost of acquisition is borne by and paid to the Government by the company concerned. Thus, it is seen that even in a case of acquisition for a company, public purpose is not eschewed. It follows, therefore, that the existence or non-existence of a public purpose is not a primary distinguishing factor between the acquisition under Part II and acquisition under Part VII. The real point of distinction seems to be the source of funds to cover the cost of acquisition. In other words, the second proviso to Section 6(1) is the main dividing ground for the two types of acquisition. This point has been stressed by this Court in *Srinivasa Coop. House Building Society Ltd. v. Madam Guruswamy Sastry* (1994) 4 SCC 675 at para 12: (SCC p. 684)

“In the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of

the acquisition is to come out of public funds. In other words, the essential condition for acquisition is for a public purpose and that the cost of acquisition should be borne, wholly or in part, out of public funds. ”

The legal position has been neatly and succinctly stated by Wanchoo, J. speaking for the Constitution Bench in *R.L. Arora v. State of U.P.*, AIR 1962 SC 764. This is what has been said: (AIR pp. 767-68, para 5)

“Therefore, though the words ‘public purpose’ in Sections 4 and 6 have the same meaning, they have to be read in the restricted sense in accordance with Section 40 when the acquisition is for a company under Section 6. In one case, the notification under Section 6 will say that the acquisition is for a public purpose, in the other case the notification will say that it is for a company. The proviso to Section 6(1) shows that where the acquisition is for a public purpose, the compensation has to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. Where however the acquisition is for a company, the compensation would be paid wholly by the company. Though therefore this distinction is there where the acquisition is either for a public purpose or for a company, there is not a complete dichotomy between acquisitions for the two purposes and it cannot be maintained that where the acquisition is primarily for a company it must always be preceded by action under Part VII and compensation must always be paid wholly by the company. A third class of cases is possible where the acquisition may be primarily for a company but it may also be at the same time for a public purpose and the whole or part of compensation may be paid out of public revenues or some fund controlled or managed by a local authority. In such a case though the acquisition may look as if it is primarily for a company it will be covered by that part of Section 6 which lays down that acquisition may be made for a public purpose if the whole part of the compensation is to be paid out of the public revenues or some fund controlled or managed by a local authority. Such was the case in *Pandit Jhandu Lal v. State of Punjab*, AIR 1961 SC 343.. It is only where the acquisition is for a company and its cost is to be met entirely by the company itself that the provisions of Part VII apply.”

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

comes forward to sanction the payment of a nominal sum towards compensation. In the present state of law, that seems to be the real position.”

(emphasis supplied).

In *Pratibha Nema* (supra) on due consideration of amended provisions, this Court has clearly laid down that the existence or non-existence of a public purpose is not a primary distinguishing factor between the acquisition under Part II and acquisition under Part VII. The real point of distinction seems to be the source of funds to cover the cost of acquisition. The second proviso to section 6(1) is the main driving ground for the two types of acquisitions. The amendment made in 1984 in section 6 does not deal with the concept of token consideration for such acquisition paid out of the public revenues. The second provision to section 6(1) makes it clear that where the compensation to be awarded for such property is to be paid out of the funds of the corporation, it is deemed to be compensation paid out of public revenue. Section 6 requires compensation determined to be paid out of the funds of the corporation then it would be deemed to be expenditure out of public revenue to make it acquisition under Part II. In the instant case corporation has paid entire compensation. It is not a case of token amount paid out of public revenue.

96. In *Devinder Singh & Ors. V. State of Punjab & Ors.* (Supra), this Court has considered concept of public purpose and observed that when an application is filed by a company for acquisition but the decision of the State has to be seen how it intended to deal with such a prayer, is a relevant factor. In case of public purpose the acquisition could be made at public expense. Therefore, evidently the provisions made in Part II shall be resorted to. On the other hand if the State forms an opinion that acquisition may not be for public purpose then the State would not bear the expenses and then the procedure laid down in Part VII shall be resorted to. This Court has laid down thus :

“16. When a request is made by any wing of the State or a government company for acquisition of land for a public purpose, different procedures are adopted. Where, however, an application is filed for acquisition of land at the instance of a “company” , the procedures to be adopted therefor are laid down in Part VII of the Act. Although it may not be decisive but the conduct of the State as to how it intended to deal with such a requisition, is a relevant factor. The action of the State provides for an important condition to consider as to whether the purpose wherefor a company requests it for acquisition of land is a public purpose and/or which could be made at public expenses either as a whole or in part, wherefor evidently provisions laid down in Part II shall be resorted to. On the other hand, if the State forms an opinion that the acquisition of land at the instance of the company may not be for public purpose or, therefore the expenses to be incurred therefor either in whole or in part shall not be borne by the State, the procedures laid down in Part VII thereof have to be resorted to. The procedures laid down under Part VII of the Act are exhaustive. The Rules have been framed prescribing the mode and manner in which the State vis-a-vis the company should proceed. It provides for previous consent of the appropriate

Government, execution of the agreement, previous inquiry before a consent is accorded, publication of the agreement, restriction on transfer, etc. It also provides for statutory injunction that no land shall be acquired except for the purpose contained in Clause (a) of sub-section (1) of Section 40 of the Act for a private company which is not a government company. For the purpose of Section 44-B of the Act, no distinction is made between a private company and a public limited company.

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

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

39. In *Shyam Behari v. State of M.P.*, AIR 1965 SC 427 it was held: (AIR p. 429, para 3)

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

40. Distinction between acquisition under Part II and Part VII is self-evident. The State was not only obligated to issue a notification clearly stating as to whether the

acquisition is for a public purpose or for the Company. Section 6 categorically states so, as would appear from the second proviso appended thereto.

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

54. In *Srinivasa Coop. House Building Society Ltd. v. Madam Gurumurthy Sastry* (1994) 4 SCC 675, noticing *Somawanti* (supra) wherein it was held that the manufacturing of the articles was for the benefit of the community and to save substantive part of foreign exchange and staff quarters to workmen, it was held: (SCC p. 684, para 12)

“12. ... On the other hand, in the case of an acquisition for a company, the compensation has to be paid by the company. In such a case there can be an agreement under Section 41 for transfer of the land acquired by the Government to the company on payment of the cost of acquisition, as also other matters. The agreement contemplated by Section 41 is to be entered into between the company and the appropriate Government only after the latter is satisfied about the purpose of the proposed acquisition, and subject to the condition precedent that the previous consent of the appropriate Government has been given to the acquisition. Section 6 is in terms, made subject to the provisions of Part VII of the Act. The declaration for acquisition for a company shall not be made unless the compensation to be awarded for the property is to be paid by a company. In the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition is for a public purpose and that the cost of acquisition should be borne, wholly or in part, out of public funds. Hence an acquisition for a company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition, for a company is to be made at the cost entirely of the company itself, such an acquisition comes under the provisions of Part VII.”

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

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

(emphasis supplied)

In the case of *Devinder* (supra) the acquisition was under Part VII and the State contribution of Rs.100/- towards cost of acquisition came during the pendency of the writ petition. This Court has held that the acquisition which was for a company could not be termed into acquisition for a public purpose by making a nominal contribution during the pendency of the writ petition. However, this Court has laid down that the source of funds to cover the cost of acquisition is determinative of the applicability of the procedure in Part II or Part VII of the Act. In case fund is coming from the company then Part VII would apply and not otherwise.

97. In *Sooraram Pratap Reddy's* case (supra), this Court has also dealt with the submission where the acquisition is for a private company whether it would be governed by the provisions of Part VII of the Act whereas the submission of the respondent was that pursuant to the Government policy it was to be acquired by APIIC and the entire compensation was to be paid by APIIC. As such the acquisition would fall under Part II of the Act. This Court has discussed the matter thus:

“96. Whereas the contention of the appellants is that the so-called acquisition is for a private company and hence it would be governed by Part VII of the Act, the stand of the respondents is that it was in pursuance of industrial policy of the State that land was to be acquired by APIIC and the entire amount of compensation was to be paid by APIIC and as such the acquisition is covered by Part II of the Act.

97. Our attention has been invited by the learned counsel for both the parties to some of the decisions on this issue.

98. *Babu Barkya Thakur v. State of Bombay*, AIR 1960 SC 1203 was probably the first leading decision of this Court on the point. In that case, a notification was issued by the erstwhile State of Bombay on 3-4-1959 under Section 4 of the Act wherein it was stated that the lands specified in the Schedule attached to the notification were likely to be needed for the purpose of M/s Mukund Iron & Steel Works Ltd., a company registered under the Companies Act, 1913. The petitioner lodged objections challenging the notification on the ground that the lands were not required for “public purpose” and the proceedings were vexatious and malicious. In the counter-affidavit filed by the Special Land Acquisition Officer, it was denied that the acquisition of the land was not for the public purpose and the proceedings were, therefore, vitiated. The Court, after referring to the Preamble and the relevant provisions of the Act, held that acquisition for company under the Act was for a “public purpose” inasmuch as constructing dwelling houses and providing amenities for the benefit of workmen employed by the company would serve public purpose. The Court observed: (AIR pp. 1206-07, para 10)

“10. ... Further, though it may appear on the words of the Act contained in Part II, which contains the operative portions of the proceedings leading up to acquisition by the Collector that acquisition for a company may or may not be for a public purpose, the provisions of Part VII make it clear that the appropriate Government cannot permit the bringing into operation the effective machinery of the Act unless it is satisfied as aforesaid, namely, that the purpose of acquisition is to enable the company to erect dwelling houses for workmen employed by it or for the provision of amenities directly connected with the company or that the land is needed for construction of some work of public utility. These requirements indicate that the acquisition for a company also is in substance for a public purpose inasmuch as it cannot be seriously contended that constructing dwelling houses, and providing amenities for the benefit of the workmen employed by it and construction of some work of public utility do not serve a public purpose.”

(emphasis supplied)

99. In *Pandit Jhandu Lal v. State of Punjab*, AIR 1961 SC 343 the land of the appellant was sought to be acquired for construction of houses by members of Thapar Industries Cooperative Housing Society Ltd., Yamuna Nagar. Proceedings were, therefore, initiated for acquisition of land under Part II of the Act. The action was challenged, inter alia, on the ground that there was non-compliance with the provisions of Part VII of the Act and the proceedings were liable to be quashed as the said procedure had not been followed. The High Court held that the land was acquired for a public purpose and there was no need to comply with the provisions of Part VII, even though the company was to pay the entire amount of compensation (which according to this Court was not factually correct). The aggrieved landowner approached this Court.

100. According to this Court (in *Pandit Jhandu Lal* case (supra)), the main point for determination was whether or not the acquisition proceedings had been vitiated by reason of the admitted fact that there was no attempt made by the Government to comply with the requirement of Part VII of the Act. Referring to *Babu Barkya* (supra) this Court held that the conclusion arrived at by the High Court was “entirely correct”, though the process of reasoning by which it had reached the conclusion was erroneous.

101. The Court (in *Pandit Jhandu Lal* case (supra)) observed that the Act contemplates acquisition for (i) a public purpose, and (ii) for a company; thus, conveying the idea that acquisition for a company, is not for a public purpose. It was also observed that the purposes of public utility, referred to in Sections 40 and 41 of the Act were akin to public purpose. Hence, acquisition for a public purpose as also acquisition for a company are governed by considerations of public utility. But the procedure for the two kinds of acquisitions is different and if it is for a company, then acquisition has to be effected in accordance with the procedure laid down in Part VII. Considering the

ambit and scope of Sections 6 and 39 to 41 and referring to Babu Barkya (supra), the Court observed: (Pandit Jhandu Lal case (supra), AIR pp. 346-47, para 8)

“8. ... There is no doubt that, as pointed out in the recent decision of this Court, the Act contemplates for a public purpose and for a company, thus conveying the idea that acquisition for a company is not for a public purpose. It has been held by this Court, in that decision, that the purposes of public utility, referred to in Sections 40-41 of the Act, are akin to public purpose. Hence, acquisition for a public purpose as also acquisitions for a company are governed by considerations of public utility. But the procedure for the two kinds of acquisitions is different, insofar as Part VII has made substantive provisions for acquisitions of land for companies. Where acquisition is made for a public purpose, the cost of acquisition for payment of compensation has to be paid wholly or partly out of Public Revenues, or some fund controlled or managed by a local authority. On the other hand, in the case of an acquisition for a company, the compensation has to be paid by the company. But, in such a case, there has to be an agreement, under Section 41, for the transfer of the land acquired by the Government to the company on payment of the cost of acquisition, as also other matters not material to our present purpose. The agreement contemplated by Section 41 is to be entered into between the company and the appropriate Government only after the latter is satisfied about the purpose of the proposed acquisition, and subject to the condition precedent that the previous consent of the appropriate Government has been given to the acquisition. The ‘previous consent’ itself of the appropriate Government is made to depend upon the satisfaction of that Government that the purpose of the acquisition was as laid down in Section 40. It is, thus, clear that the provisions of Sections 39-41 lay down conditions precedent to the application of the machinery of the Land Acquisition Act, if the acquisition is meant for a company.”

(emphasis supplied)

102. The Court then dealt with the extent and applicability of Section 6 of the Act and stated: (Pandit Jhandu Lal case (supra), AIR p. 347, para 8)

“8. ... Section 6 is in terms made subject to the provisions of Part VII of the Act. The provisions of Part VII, read with Section 6 of the Act, lead to this result that the declaration for the acquisition for a company shall not be made unless the compensation to be awarded for the property is to be paid by a company. The declaration for the acquisition for a public purpose, similarly, cannot be made unless the compensation, wholly or partly, is to be paid out of public funds. Therefore, in the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But, that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition

for a public purpose is that the cost of the acquisition should be borne, wholly or in part, out of public funds. Hence, an acquisition for a company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition for a company is to be made at the cost entirely of the company itself, such an acquisition comes under the provisions of Part VII. As in the present instance, it appears that part at any rate of the compensation to be awarded for the acquisition is to come eventually from out of public revenues, it must be held that the acquisition is not for a company simpliciter. It was not, therefore, necessary to go through the procedure prescribed by Part VII. We, therefore, agree with the conclusion of the High Court, though not for the same reasons.”

(emphasis supplied)

106. In *R.L. Arora (II) v. State of U.P.*, AIR 1962 SC 764 this Court held that in view of the amendment made in the Act, even if the acquisition did not satisfy conditions laid down under clause (a) and clause (b) of sub-section (1) of Section 40 of the Act, it would be valid, if they satisfy conditions in clause (aa) introduced by the Amendment Act. It was also held that once the Government decided to acquire land for public purpose, such acquisition cannot be challenged on the ground that procedure laid down in Part VII had not been followed. The Court, keeping in view the Land Acquisition (Amendment) Act, 1962 (Act 31 of 1962), held that clause (aa) of sub-section (1) of Section 40 as inserted by Act 31 of 1962 did not contravene Article 31(2) or Article 19(1)(f) of the Constitution. Accordingly, the acquisition was held legal and valid.

107. A special reference may be made to a decision of the Division Bench of the High Court of Gujarat in *Motibhai Vithalbai Patel v. State of Gujarat* AIR 1961 GUJ 93. In *Motibhai* (supra) land was sought to be acquired for a company, namely, Sarabhai Chemicals for its expansion. It was contended that acquisition was not for public purpose under Section 4 of the Act and it was bad in law.

108. Considering the relevant provisions of the Act as also leading cases on the point, the Court (in *Motibhai* case (supra) held that even if the acquisition of land is for a private concern whose sole aim is to make profit, the intended acquisition of land would materially help in saving foreign exchange in which the public is also vitally concerned in our economic system. It can, therefore, be said to be a public purpose and would not be bad. The Court stated: (*Motibhai* case (supra), AIR p. 104, para 42)

“42. This is just as well. So diverse and varied can be the activities, engagements and operations which may redound to the general benefit of the public and in which the general interest of the public can be said to be really involved that it is impossible to expect a definition exclusive or inclusive which will aptly meet every particular objective within the matrix of public purpose and not fail in some circumstances. The

expression is of convenient vagueness and the court can at best give temporary definiteness but not definitiveness to the undefined and shifting boundaries of a field which now seems likely to raise some frequent and fighting issues and give rise to different problems for adjudication.”

It was also observed: (Motibhai case (supra), AIR p. 104, para 43)

“43. Public purpose is not a constant. The scope of an expression which conjugates general interest of the public must necessarily depend inter alia on social and economic needs and broad interpretation of the democratic ideal. It must alter as social and economic conditions alter. The social and economic theorist may contend for an extremely wide application of this concept of public purpose and overemphasise the element of the general interest of the public. The reactionary on the other hand may strive for stringent restraints on its shifting boundaries and oppose any shift in emphasis. The true rule of the matter would seem to lie midway. The Court will not attach too much weight to the apparent character of the activity or agency but would prefer to lean in favour of an application of the rule which has regard to the substance of the matter and embraces activities, engagements and operations which would serve the common good as being affected with public interest. The application of the rule must rest on the modern economic system of a welfare State having its own requirements and problems. The application of the rule would not be governed by right distinctions nor would the economic principle be allowed to be blurred by the blending of forms and interests”

(emphasis supplied)

The Court proceeded to state: (Motibhai case (supra), AIR p. 104, para 44)

“44. In the field of economic progress and interest of the public the application of the rule would include operations which are more or less indispensable to the community. The very lack of definitiveness of the expression public purpose, somewhat paradoxical though it may seem requires that the field of its coverage must extend to concerns which are fit to serve the common welfare. That coverage can include activities open to the initiative of both private enterprise and public administration for private enterprise is certainly amenable to public control and can be an efficient instrument of economic benefit.” Upholding the acquisition, the Court concluded: (Motibhai case (supra), AIR p. 105, para 48)

“48. ... It cannot be ignored that Respondent 2 Company is a scheduled industry controlled by the provisions of the Industries (Development and Regulation) Act, 1951. The price of its products is subject to these controls. We are also satisfied that the public is vitally concerned in the saving of foreign exchange in our present economic situation and that this is an aspect of the matter which has to be borne in mind. We are satisfied that the respondents are correct in their submission that the

intended acquisition of lands in dispute would materially help in the saving of such exchange. We have to consider together all the aspects of the case which redound to and result in the benefit of the public and on an assessment of all the facts and circumstances of the case and the cumulative effect of the same we are of the opinion that the land in dispute is needed for a public purpose as contended by the respondents. We may add that the notifications under Sections 4 and 6 are not defective on any of the grounds urged before us on behalf of the petitioner as held by us and the declaration under Section 6 is conclusive evidence that the land in dispute is needed for a public purpose.”

111. In *Aflatoon v. Lt. Governor of Delhi* (1975) 4 SCC 285 land was sought to be acquired for “Planned Development of Delhi” . Neither the master plan nor the zonal plan was ready. The question before this Court was whether acquisition proceedings could have been initiated in the absence of master plan or zonal plan. Considering the relevant provisions of the Delhi Development Act, 1957, the Court held that the proceedings did not get vitiated in the absence of such plan. The Court observed that acquisition generally precedes development. If for proper development, land is sought to be acquired, such action could not be said to be illegal, unlawful or in colourable exercise of power. It was also contended that the acquisition was for company inasmuch as after acquisition, the Government proposed to hand over the property or a portion thereof to cooperative housing societies and since procedure in Part VII of the Act was not followed, the acquisition was not valid. Even the said contention was negated by the Court observing that merely because the Government allotted a portion of the property to cooperative societies, Part VII did not get attracted and the acquisition could not be held invalid. (See also *Ajay Krishan Shinghal v. Union of India* (1996) 10 SCC 721.)

112. In *S.S. Darshan v. State of Karnataka* (1996) 7 SCC 302 land was sought to be acquired under the Act for public purpose, namely, for setting up Information Technological Park. Challenging the acquisition, it was contended by the petitioners that the acquisition was mala fide and in colourable exercise of power since primarily the acquisition was for a private limited company and not for the State. The relevant part of the notification read thus: (*S.S. Darshan case* (supra), SCC p. 304, para 5)

“The lands shown in the annexed index are required for a public purpose, that is, to establish information technological park through Karnataka Industrial Areas Development Board!”

(emphasis supplied)

Emphasizing the fact that the acquisition was through the Board, this Court ruled that acquisition was for a public purpose. The notification stated about public purpose of establishment of information technological park through the Board. Considering various clauses in the joint venture agreement, the Court held that the cumulative

effect of all went to show that acquisition was for the public purpose of setting up technological park by the Government of Karnataka through the Karnataka Industrial Areas Development Board and was, therefore, valid.

113. In *W.B. Housing Board v. Brijendra Prasad Gupta* (1997) 6 SCC 207 land was acquired for providing houses to poor people. The action was challenged, inter alia, on the ground that the Housing Board was to earn profit and hence it could not have been said to be a public purpose. Refuting the contention and upholding the acquisition, the Court took note of the fact that it was a matter of common knowledge that there is acute shortage of housing accommodation both in rural and urban areas of the country. The Court also stated that since late the prices of real estate have skyrocketed making it beyond the reach of low income and middle income groups of people, hence, the State has a duty to give shelter to homeless people, specially, to the people of the low income group. If for that purpose it sought to acquire land, it could not be said that acquisition was illegal or unlawful.

114. Regarding earning of profit, the Court stated: (*Brijendra Prasad Gupta case* (supra), SCC p. 225, para 26)

“26. Simply because there is an element of profit, it could not make the whole scheme illegal. A private entrepreneur will certainly look to some profit but to see that the profit motive does not lead to exploitation even of the rich and that the houses are available to the poor people and to middle class people at nominal or affordable prices, or even on no-profit-no-loss basis, the Housing Board exercises the necessary control. It is certainly a public purpose to provide houses to the community especially to poor people for whom the prices are beyond their means and they would otherwise never be able to acquire a house.”

The Court concluded: (*Brijendra Prasad Gupta case* (supra), SCC p. 225, para 28)

“28. The Court must shake off its myth that public purpose is served only if the State or the Housing Board or the joint sector company does not earn any profit. There cannot be any better authority than the State or the statutory corporation to supervise or monitor the functions of the joint venture company. Courts will certainly step in if the public purpose is sought to be frustrated.”

(emphasis supplied)

116. Reliance was also placed on *State of Karnataka v. All India Manufacturers Organisation* (2006) 4 SCC 683. In that case, the Government of Karnataka undertook a mega project for developing its transport and communication system. A memorandum of understanding was entered into between the State Government and a company for implementation of the project and lands were acquired. A public interest litigation (PIL) was filed in the High Court alleging that the land was not needed for

public purpose and yet excess land was acquired and had been given to a company. The action was, therefore, illegal, unlawful and mala fide. Negating the contention and upholding the action, this Court observed that the project was an integrated infrastructure development project and not merely a highway project. As an integrated project, it required acquisition and transfer of lands even away from the main alignment of the road. Acquisition of land and giving it to the company was, therefore, legal and lawful and did not suffer from mala fides.

127. We would have indeed considered the contention of the learned counsel for the appellants closely in the light of earlier decisions of this Court. We are, however, of the view that on the facts and in the circumstances of the present case, the Government was right in forming an opinion and reaching a satisfaction as to “public purpose” and in initiating proceedings under Sections 4 and 6 and in invoking Part II of the Act. We, therefore, refrain from undertaking further exercise. In our considered opinion, it is not necessary for us to enter into larger question in view of “fact situation” in the instant case. Conclusions

128. Applying the aforesaid principles to the case on hand, in our considered opinion, it cannot be said that the proceedings initiated by the State for acquisition of land under the Land Acquisition Act, 1894 are illegal, unlawful, unwarranted, mala fide, fraud on statute or have been taken in colourable exercise of power.

131. In our judgment, the respondents are right in submitting that in case of integrated and indivisible project, the project has to be taken as a whole and must be judged whether it is in the larger public interest. It cannot be split into different components and to consider whether each and every component will serve public good. A holistic approach has to be adopted in such matters. If the project taken as a whole is an attempt in the direction of bringing foreign exchange, generating employment opportunities and securing economic benefits to the State and the public at large, it will serve public purpose.

132. It is clearly established in this case that the infrastructure development project conceived by the State and executed under the auspices of its instrumentality (APIIC) is one covered by the Act. The joint venture mechanism for implementing the policy, executing the project and achieving lawful public purpose for realising the goal of larger public good would neither destroy the object nor vitiate the exercise of power of public purpose for development of infrastructure. The concept of joint venture to tap resources of private sector for infrastructural development for fulfilment of public purpose has been recognized in foreign countries as also in India in several decisions of this Court.

133. The entire amount of compensation is to be paid by State agency (APIIC) which also works as nodal agency for execution of the project. It is primarily for the State to decide whether there exists public purpose or not. Undoubtedly, the decision of the

State is not beyond judicial scrutiny. In appropriate cases, where such power is exercised mala fide or for collateral purposes or the purported action is dehors the Act, irrational or otherwise unreasonable or the so-called purpose is “no public purpose” at all and fraud on statute is apparent, a writ court can undoubtedly interfere. But except in such cases, the declaration of the Government is not subject to judicial review. In other words, a writ court, while exercising powers under Articles 32, 226 or 136 of the Constitution, cannot substitute its own judgment for the judgment of the Government as to what constitutes “public purpose”

(emphasis supplied)

Thus this Court has laid down that when the entire compensation is to be paid by APIIC, it is for the State to decide whether there exists a public purpose or not, though the decision of the State is not beyond judicial scrutiny. Whether it is exercised mala fide or collaterally or dehors of the Act and no public purpose would be served, court can interfere. The expenditure out of the funds of the APIIC was held to be from public revenue as provided in Explanation 2 of section 6(1) of the Act.

98. In *Urmila Roy & Ors. v. Bengal Peerless Housing Development Co. Ltd. & .Ors*⁴². this Court has considered the amended provisions and Explanation 2 of section 6 and held that the expenditure is the test for applicability of the procedure prescribed in Part II as it was borne by the State Government or the Housing Board that the acquisition was for Part II and not Part VII of the Act. This Court has held thus:

“38. A perusal of the second proviso and Explanation 2 of Section 6 in particular reveals that if the compensation awarded for the property is paid substantially out of the funds of a corporation owned or controlled by the State, such compensation will be deemed to be paid out of public funds and as such would satisfy the test of acquisition for a public purpose.

39. We see from the record that as per the letter issued by the Land Acquisition Collector on 13-11-2001 to the Housing Ministry of the State Government, a request had been made that a sum of Rs 3 crores which represented about 50% of the compensation of the acquired land be deposited. This memo had been forwarded by the State Government to the Housing Board and on 23-11-2001 a sum of Rs 1.70 crores towards compensation had been sent by Bengal Peerless to the Land Acquisition Collector through the Housing Board.

40. It appears that on 30-10-2003 the State Government had requested the Housing Board to make arrangements for the balance payment of compensation of about Rs 82,04,138 and by a memorandum of 31-10-2003 the Government of West Bengal had directed the Housing Board to pay the additional balance compensation which too was defrayed by an account payee cheque dated 3-11-2003 drawn on Bank of Maharashtra. The accounts statement of Bank of Maharashtra was produced before us

for perusal and this statement supports the argument that the aforesaid amount had, indeed, been paid from the funds of the Housing Board which is completely owned and controlled by the State Government.

41. In their written submissions the appellants have doubted the accuracy of this accounts statement, by asserting that they had not been able to verify its contents as it had been produced for the first time in this Court. We find that even if this objection is accepted and the statement ruled out of consideration, the other evidence on record does indicate that a substantial part of the compensation had been paid from the government funds.

43. In *Indrajit Parekh v. State of Gujarat* (1975) 1 SCC 824 in which a somewhat restricted meaning has been given to the extremely broad parameters laid down in *Pratibha Nema* case (supra), but it has nonetheless been observed that if a reasonable amount of compensation had been drawn out of government funds, it would satisfy the requirement of a public purpose as per the Act.

44. In the present case, as already mentioned above, we find that a substantial part of the compensation has, indeed, been paid by the State Government or by the Housing Board which clearly satisfies the test of public purpose. In this background, we endorse the finding of the Division Bench that the procedure envisaged in Part II and not in Part VII of the Act would be applicable. This is precisely what has been done.”

99. In *Nand Kishore Gupta & Ors. v. State of U.P. & Ors.* (Supra) this Court has referred to the decisions in *Devinder Singh* (supra) and *Pratibha Nema* (supra) and has laid down that there was no conflict in the decisions. This Court has considered the matter thus :

“80. During the debate, the decision in *Devinder Singh v. State of Punjab* (2008) 1 SCC 728 was also referred to. It was urged that there was a conflict in this decision and the decision in *Pratibha Nema* case (2003) 110 SCC 626. This was a case where the petitioners who were the owners of the agricultural lands, had challenged the acquisition of lands for M/s International Tractors Ltd. It was claimed that the land was being acquired for public purpose i.e. setting up Ganesha Project of M/s International Tractors Ltd. at various villages. The High Court had held that the land acquisition was for public purpose. This Court explained the “public purpose” as defined in Section 3(f) of the Act and noted that the aforementioned Ganesha Project was not a project of the State, but the one undertaken by the Company M/s International Tractors Ltd. The Court then went on to consider Sections 40 and 41 of the Act along with Rule 4 of the Land Acquisition (Companies) Rules, 1963 and came to the conclusion that the same could not be a public purpose as the whole compensation was coming from the coffers of the Company. In that view, the Court further came to the conclusion that the State not having followed the provisions of Sections 40 and 41 of the Act, the whole process had suffered illegality.

81. The Court also considered the decision in Pratibha Nema case (supra) and distinguished the same by making a comment to the following effect: (Devinder Singh case (supra), SCC p. 738, para 22)

“22. ... But we must hasten to add that the Bench did not have any occasion to consider the question as to whether the State is entitled to take recourse to the provisions of both Part II and Part VII of the Act simultaneously.”

The Court, however, refused to go into the nicety of the question and observed that in a case of acquisition for a public company, public purpose is not to be assumed and the point of distinction between acquisition of lands under Part II and Part VII of the Act would be the source of funds to cover the cost of acquisition. The Court also considered the judgment of this Court in Somawanti v. State of Punjab, AIR 1963 SC 151, Jage Ram v. State of Haryana (1971) 1 SCC 671 and Shyam Behari v. State of M.P. AIR 1965 SC 427 Ultimately, the Court came to the conclusion that the necessary provisions not having been found, the view of the High Court was not correct, whereby it had upheld the land acquisition, holding it to be for the public purpose.

82. We have closely seen the judgment in Devinder Singh (supra) however, the factual situation in the judgment is quite different. In our opinion, the judgment will not help the appellants to contend that the present land acquisition is not for public purpose. We also do not think that there is any serious conflict between the decision in Pratibha Nema case (supra) and the decision in Devinder Singh v. State of Punjab (supra), so as to require a reference to the larger Bench. In our opinion, the decision in Pratibha Nema case (supra) applies to the fact situation in this case.

83. Therefore, considering the overall factual situation, we are of the opinion that the High Court was right in holding that the acquisition was made for the public purpose. We find from the order of the High Court that the High Court has considered the question of public purpose keeping in mind the correct principles of law. We are, therefore, of the opinion that the contention raised by the learned counsel for the appellants that this acquisition was not for the public purpose for various reasons which we have discussed, is not correct.”

100. In my opinion for the purpose of acquiring land in the instant case it was not necessary to have recourse to the provisions contained in Chapter VII of the Act. The proposal submitted to the Cabinet on 30.5.2006 indicates that the West Bengal Industrial Development Corporation (WBIDC) was the acquiring body to acquire 1053 acres of land for Small Car Project of TML at Singur which was comprised in Gopal Nagar, Singherberi, Beraberi, Khaserberi and Bajemelia. Thus the Cabinet has approved the said proposal. WBIDC was associated with the project right from the beginning and was instrumental in getting the land identified by the TML for the purpose of selection. The memo for the Standing Committee of

the Cabinet on Industry dated 26.7.2006 contains the decision of acquisition of land for public purpose under Land Acquisition Act it was made considering the following facts :

“(B) Declaration of Acquisition as Public Purpose under the LA Act Keeping in view the importance of this Industrial investment in the automobile sector for the industrial development of the State, and keeping in view the fact that the land is being acquired by the West Bengal Industrial Development Corporation as the Requiring Body, and WBIDC being a Corporation owned and controlled by the State Government, it is proposed that this acquisition be done for public purpose in terms of Section 3(f)(iv) of the Land Acquisition Act, 1894. The matter is accordingly placed before the Standing Committee of the Cabinet on Industries for decision on the following :

1. Approval of the revised package of incentives as described in item A above;
2. Approval for taking up land acquisition for public purpose as described in item B above.”

The Standing Committee has approved the same as apparent from the Minutes placed on record. Notification under section 4 of the Act was published in the Gazette on 21.7.2006 in which it was mentioned that the land is likely to be needed by the Government/Government undertaking/Development Authorities at the public expense for public purpose, viz., employment generation and socio-economic development of the area by setting up small car project. Though it was not specifically mentioned that the WBIDC is to be the acquiring body but a decision had already been taken in this regard and the aforesaid expression Government Undertaking/Development authorities would include acquisition by WBIDC as the Government has decided to treat it as a public purpose as it was to generate direct employment to 1800 persons and by direct employment through vendors and through other service providers to 4700 persons approx. Similar is the position with respect to declaration under section 6 of the Act. As the Government has treated the acquisition for a public purpose and the entire money has been paid by WBIDC consequently by mere mention that the land was required for the small car project of TML would not make it an acquisition for a company under Part VII. Non-mention of WBIDC cannot be taken to be an illegality impinging the validity of the notification under section 4 of the Act. The fact that the application was filed by TML indicating its willingness for setting up the industry would not also make it an acquisition for a company but how the State has dealt with the same, would be the decisive factor. Since WBIDC was involved right from the beginning by the State Government and a decision was taken by the State Government that WBIDC would be the acquiring authority and WBIDC was involved in identification of the land and the reports were submitted by it to the Government, the acquisition was for WBIDC is apparent as the land was to vest in the WBIDC and it has paid the compensation. Payment of premium amount as per the conditions of lease agreement fastened upon the TML would also not make it a compensation paid by TML as already discussed hereinabove. In my opinion it was

not necessary for the State Government to deposit the amount of compensation as compensation paid by the corporation is also to be treated out of public revenue.

101. The aims and objects of the amendment of section 3(f) when taken into consideration would not alter the aforesaid position of law. Acquisition of land for a company or for industrialization if it is for public purpose would be covered under section 3(f) as amended and when corporation is the acquiring authority and amount of compensation is borne by it in entirety and land has been ultimately leased out to TML for its project by it the acquisition would remain for a public purpose under section 3(f) attracting Part II of the Act. The procedure adopted under Part II cannot be said to be impermissible. It cannot be said to be acquisition under guise of public purpose so as to violate the intendment of exclusion of the company from section 3(f) as amended.

102. *Amarnath Ashram Trust Society & Anr. v. Government of U.P. & Ors.*, *Pratibha Nema, Devinder Singh v. State of Punjab*, *Sooraram Pratap Reddy, Urmila Roy & Ors. v. Bengal Peerless Housing Development Co. Ltd. & Ors.*, and *Nand Kishore Gupta v. State of U.P.* discussed hereinabove are binding on a Co-ordinate Bench and I find no reason to take a different view on merits .

103. Even otherwise I feel bound by the principle of stare decisis in view of the aforesaid consistent decisions of this Court. In *WamanRao v. Union of India*⁴³ it has been laid down that the rule of stare decisis requires that it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis. In *Union of India v. Raghbir Singh*⁴⁴ it has been laid down that the law declared by this Court should be certain, clear and consistent. The doctrine of binding precedent has the merit of promoting certainty and consistency in judicial decisions. In *Krishena Kumar v. Union of India*⁴⁵, law to the similar effect has been laid down when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. In *Mishri Lal v. Dharendra Nath*⁴⁶, it has been laid down that the doctrine is based on ‘public policy’ and should be adhered to subserve the ends of justice. In *Central Board of Dawoodi Bohra Community v. State of Maharashtra*⁴⁷ it has been observed that the doctrine has the merit of promoting certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of daily affairs. In *Shanker Raju v. Union of India*⁴⁸ it has been observed that a judgment, which has held the field for a long time, should not be unsettled. The view which has held the field for a long time should not be disturbed only because another view is possible. In *Fida Hussain v. Moradabad Development Authority & Anr*⁴⁹. it has been observed that the decision of two Judges is binding on another Division Bench of two Judges. Following observations have been made by this Court in *Union of India v. Raghbir Singh*⁵⁰ :

“28. We are of the opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court.”

In *Union of India v. Paras Laminates (P) Ltd. (Supra)* it has been observed that a Co-ordinate Bench should not disturb the decision on an identical question. The rationale of this rule is the need for continuity, certainty and predictability in the administration of justice. It is necessary to inculcate confidence in the administration of justice as laid down in *Joint Commissioner of Income Tax, Surat v. Saheli Leasing and Industries Ltd⁵¹*. It cannot be referred to a larger Bench unless there is an error apparent on its face or that a particular earlier decision was not noticed, which has a direct bearing or has taken a contrary view. In *The Keshav Mills Co. Ltd. v. CIT, (Supra)* a Constitution Bench of this Court has observed that in reviewing and revising its earlier decision, in the interests of the public good or for any other valid and compulsive reasons, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the

104. In my opinion, on merits the view taken by this Court does not require reconsideration at all and otherwise also I find no ground in view of the consistent decisions to take a different view.

105. For the aforesaid reasons I respectfully disagree with the conclusion of esteemed brother on question numbers 1 and 2.

IN RE. QUESTION NOS. 3, 4 AND 5

106. Coming to question nos. 3, 4 and 5 as they are inter connected, it appears that even before issuance of notification under section 4 of the Act decision has been taken to acquire the land in question. The notification under section 4 is an introductory measure. Section 4 of the Act is extracted hereunder :

“4. Publication of preliminary notification and powers of officers thereupon.—(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 authorized 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.”

107. It is apparent from section 4(2) that after notification is issued it shall be lawful for any officer to enter upon and survey and to do all the acts which are necessary to ascertain whether land is adapted for such purpose. The notification is of exploratory character and it does not proprio motu result in acquisition. The proposal for acquisition in any particular locality ripens into definite proceedings where Government is satisfied how land is needed for public purpose. Section 4(1) does not require land to be defined or identified but requires locality to be stated so as to file objection under section 5 of the Act. In the instant case the Cabinet has taken a decision to acquire the said land beforehand for which a notification has ultimately been issued under sections 4 followed by declaration under section 6 of the Act. The right under section 5A of the Act is a valuable right has been laid down in various decisions cited at bar referred hereinafter.

108. In *Raghubir Singh Sherawat v. State of Haryana & Ors.* (*Supra*) it was observed thus :

“39. In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5-A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilised for execution of the particular project or scheme.”

In *Kamal Trading (P) Ltd. v. State of W.B.* (2012) 2 SCC it was held thus:

“25. According to the appellant, the notification under Section 4 of the LA Act was not served on the owner companies. However, upon coming to know of this notification, the ap-pellant vide their letter dated 8-9-1997 submitted objections running into four pages containing 8 paragraphs. We have already noted that the Second Land Acquisition Officer adjourned the hearing on one occasion as requested by the appellant. He, however, refused to adjourn the matter any further. The second request was rejected. We feel that looking to the nature of the issues involved, the Second Land Acquisition Officer could have adjourned the proceedings after putting the appellant to terms because hearing the representative of the owner companies was mandatory. In any event, if he did not want to adjourn the proceedings and

wanted to consider the objections in the absence of the counsel for the owner companies and assuming such a course is permissible in law, he should have dealt with the objections carefully and not in such a light-hearted manner because a heavy responsibility rested on his shoulders”

(emphasis supplied)

109. In *Surinder Singh Brar & Ors.v. Union of India & Ors.(Supra)* it was observed thus :

“69. In the context of the statement contained in the first line of the paragraph titled “Observations” , we repeatedly asked ShriSudhirWalia, learned counsel assisting Dr Rajiv Dhavan to show as to when the LAO had summoned the revenue records and when he had conducted spot inspection but the learned counsel could not produce any document to substantiate the statement contained in the two reports of the LAO. This leads to an inference that, in both the reports, the LAO had made a misleading and false statement about his having seen the revenue records and conducted spot inspection. That apart, the reports do not contain any iota of consideration of the objections filed by the landowners. Mere reproduction of the substance of the objections cannot be equated with objective consideration thereof in the light of the submission made by the objectors during the course of hearing. Thus, the violation of the mandate of Section 5-A(2) is writ large on the face of the reports prepared by the LAO.

(emphasis supplied)

70. The reason why the LAO did not apply his mind to the objections filed by the appellants and other landowners is obvious. He was a minion in the hierarchy of the administration of the Union Territory of Chandigarh and could not have even thought of making recommendations contrary to what was contained in the letter sent by the Administrator to Surinder Singh Brar. If he had shown the courage of acting independently and made recommendation against the acquisition of land, he would have surely been shifted from that post and his career would have been jeopardised. In the system of governance which we have today, junior officers in the administration cannot even think of, what to say of, acting against the wishes/dictates of their superiors. One who violates this unwritten code of conduct does so at his own peril and is described as foolhardy. Even those constituting higher strata of services follow the path of least resistance and find it most convenient to tow the line of their superiors. Therefore, the LAO cannot be blamed for having acted as an obedient subordinate of the superior authorities, including the Administrator. However, that cannot be a legitimate ground to approve the reports prepared by him without even a semblance of consideration of the objections filed by the appellants and other landowners and we have no hesitation to hold that the LAO failed to discharge the statutory duty cast upon him to prepare a report after objectively considering the

objections filed under Section 5-A(1) and submissions made by the objectors during the course of personal hearing.

(emphasis supplied).

76. Section 5-A, which embodies the most important dimension of the rules of natural justice, lays down that any person interested in any land notified under Section 4(1) may, within 30 days of publication of the notification, submit objection in writing against the proposed acquisition of land or of any land in the locality to the Collector. The Collector is required to give the objector an opportunity of being heard either in person or by any person authorised by him or by pleader. After hearing the objector(s) and making such further inquiry, as he may think necessary, the Collector has to make a report in respect of land notified under Section 4(1) with his recommendations on the objections and forward the same to the Government along with the record of the proceedings held by him. The Collector can make different reports in respect of different parcels of land proposed to be acquired.

84. What needs to be emphasised is that hearing required to be given under Section 5-A(2) to a person who is sought to be deprived of his land and who has filed objections under Section 5-A(1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further enquiry as he may think necessary. In either eventuality, he has to make report in respect of the land notified under Section 4(1) or make different reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections and submit the same to the appropriate Government along with the record of proceedings held by him for the latter's decision. The appropriate Government is obliged to consider the report, if any, made under Section 5-A(2) and then record its satisfaction that the particular land is needed for a public purpose. This exercise culminates into making a declaration that the land is needed for a public purpose and the declaration is to be signed by a Secretary to the Government or some other officer duly authorised to certify its orders. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is sine qua non for issue of a declaration under Section 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under Section 5-A(1) and submissions made at the hearing given under Section 5-A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made under Section 6(1) will be devoid of legal sanctity if statutorily

engrafted procedural safeguards are not adhered to by the authorities concerned or there is violation of the principles of natural justice. The cases before us are illustrative of flagrant violation of the mandate of Sections 5-A(2) and 6(1). Therefore, the second question is answered in the affirmative.

(emphasis supplied)

87. The proposition laid down in the aforementioned two judgments does not support the stance of the Chandigarh Administration that even though there is breach of the mandate of Section 5-A read with Section 6(1), the Court cannot, after the issue of declaration under Section 6(1), nullify the acquisition proceedings. As a matter of fact, the ratio of both the judgments is that satisfaction of the appropriate Government envisaged in Section 6(1) must be preceded by consideration of the report prepared by the Collector after considering the objections filed under Section 5-A and hearing the objectors. This necessarily implies that the Government must objectively apply its mind to the report of the Collector and the objections filed by the landowners and then take a decision whether or not the land is needed for the specified public purpose. A mechanical endorsement of the report of the Collector cannot be a substitute for the requirement of application of mind by the Government which must be clearly reflected in the record.

88. In addition to what we have observed on the issue of flagrant violation of the two sections, it will be apposite to recapitulate the language of the declarations issued under Section 6(1), which were published on 28-2-2007. A reading of the declarations makes it clear that the authority issuing the same was totally unmindful of the requirement of the statute. This could be the only reason why instead of recording satisfaction of the appropriate Government that the land is needed for a public purpose, the notification uses the expressions “appears to the Administrator” and “likely to be needed” . This only adds to the casualness with which the entire issue of acquisition has been dealt with by the higher functionaries of the Chandigarh Administration.

89. Adverting to the impugned order [Surinder Singh Brar v. Union of India, W.P. (C) No. 5065 of 2007, decided on 18-3-2011 (P&H)], we find that the High Court has not examined the substantive grounds on which the appellants had challenged the acquisition of their land with the required seriousness and failed to notice that the LAO had not at all considered several objections including those relating to adverse impact on the environment and ecology of the area raised by the landowners and mechanically recommended the acquisition of land notified under Section 4(1), that the reports of the LAO were not placed before the competent authority and that even the Adviser had not objectively considered the reports of the LAO in the light of the objections filed under Section 5-A(1) and simply appended his signatures on the note prepared by the Secretary (Finance). This omission on the High Court’s part has resulted in miscarriage of justice.”

110. In *Gojer Brothers Private Ltd. & Anr. v. State of West Bengal & Ors*⁵², this Court observed :

“18. In *Surinder Singh Brar v. Union of India* (2013) 1 SCC 403, this Court extensively considered the report prepared by the Land Acquisition Officer and the decision taken by the administration of the Union Territory of Chandigarh and observed: (SCC pp. 450-51, 455-58, paras 68-70, 76-79 & 84)

“68. A cursory reading of the reports of the LAO may give an impression that he had applied his mind to the objections filed under Section 5-A(1) and assigned reasons for not entertaining the same, but a careful analysis thereof leaves no doubt that the officer concerned had not at all applied his mind to the objections of the landowners and merely created a facade of doing so. In the opening paragraph under the heading ‘Observations’, the LAO recorded that he had seen the revenue records and conducted spot inspection. He then reproduced the Statement of Objects and Reasons contained in the Bill which led to the enactment of the Punjab New Capital (Periphery) Control Act, 1952 and proceed to extract some portion of reply dated 31-7-2006 sent by the Administrator to Surinder Singh Brar.

19. In *Usha Stud and Agricultural Farms (P) Ltd. v. State of Haryana* (2013) 4 SCC 210, the Court reiterated the propositions laid down in *Raghubir Singh Sehrawat case* (2012) 1 SCC 792 and *Kamal Trading (P) Ltd. v. State of W.B.* (2012) 2 SCC 25 and observed: (*Usha Stud case* (supra), SCC p. 227, para 30)

“30. The ratio of the aforesaid judgments is that Section 5-A(2), which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. That section also makes it obligatory for the Collector to submit report(s) to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him so that the Government may take appropriate decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1).”

21. In our view, non-consideration of the objections filed under Section 5-A(1) has resulted in denial of effective opportunity of hearing to the appellant. The manner in which the Joint Secretary to the Government approved the recommendation made by

the Land Acquisition Collector favouring acquisition of the property is reflective of total non-application of mind by the competent authority to the recommendation made by the Land Acquisition Collector and the report prepared by him.”

111. In *Usha Stud & Agricultural Farms (P) Ltd. v. State of Haryana*⁵³ this Court observed :

“30. The ratio of the aforesaid judgments is that Section 5-A(2), which represents statutory embodiment of the rule of *audi alteram partem*, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the Notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. That section also makes it obligatory for the Collector to submit report(s) to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him so that the Government may take appropriate decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1).”

112. In *Sharma Agro Industries v. State of Haryana & Ors. (2015) 3 SCC 341*, it was observed :

“14. The Land Acquisition Collector in the present case has recommended to the State Government that the land covered in these civil appeals need not be acquired. On our direction, Mr. Manjit Singh, the learned Additional Advocate General representing the State of Haryana has made available the record pertaining to acquisition of the lands involved in these appeals. The following is the relevant translated extract of the recommendations made by the Land Acquisition Collector:

“On 16-1-2003 I visited the spot concerned for the purpose of inspection; with the Kanoongo and Patwari belonging to the Revenue Department. A seller has been established since 1981 in Khasra Nos. 3959, 3960, 3961/1, 3961/2, 3963, 3964, 3965, 3966/1, 3967, 3968 with a total area of 29 bighas 11 biswas. The Government of Haryana, Department of Industry, had also issued a licence to the seller for this industry, and the same is operative till date. An old factory is established in Khasra Nos. 3966/2, 3971/2, with a total area of 1 bigha 11 biswas. Small-scale industry licences established in Khasra Nos. 4000, 4001/2, 4001/1/1, 4001/1/2, 4001/1/3, 4002/1, 4002/2 where old factories along with lantered houses have been constructed. When the land was acquired in 1986 in Sector 3, the abovementioned khasra numbers were excluded from the acquisition process. Hence the abovementioned land may be

released, measuring total of 37 bighas and 13 biswas. The above numbers are leftover for acquirement.

sd/-
Land Acquisition Collector, Karnal”

The State Government has neither accepted the recommendations of the Land Acquisition Collector nor assigned any reasons before issuing declaration notification under Section 6 of the Act. The same is sought to be justified by the learned Additional Advocate General contending that it is the prerogative of the Government to either accept or reject the recommendations of the Land Acquisition Collector with respect to the proposed land to be acquired by issuing declaration notification under Section 6 of the Act. This contention of the learned Additional Advocate General is wholly untenable in law in view of the decisions referred to above. However, after advertent to the decisions of this Court in the above case and in the cases referred to supra, the said report of the Land Acquisition Collector was neither accepted by the Government nor did the Government assign any reasons before issuing the declaration notification by holding that the land is required for public purpose, we are of the view that the acquisition proceedings are vitiated in law.

15. The learned Senior Counsel for the appellants has rightly placed reliance upon the decision of this Court in *Vinod Kumar v. State of Haryana* (2014) 3 SCC 203, wherein this Court referred to the legal principle laid down in *Women’s Education Trust v. State of Haryana* (2013) 8 SCC 99, and has held as under: (SCC p. 119, para 35)

“35. What is most surprising is that the High Court did not even deal with the issue relating to application of mind by the Government to the report submitted by the Land Acquisition Collector under Section 5-A(2) along with his recommendations. The documents produced before the High Court and this Court do not show that the State Government had objectively applied mind to the recommendations made by the Land Acquisition Collector and felt satisfied that the land in question deserves to be acquired for the purpose specified in the notification issued under Section 4(1). The record also does not contain any indication as to why the State Government did not consider it proper to accept the recommendations of the Land Acquisition Collector. Therefore, there is no escape from the conclusion that the impugned acquisition is ultra vires the provisions contained in Section 6 of the Act.” ”

113. In *Vinod Kumar v. State of Haryana & Ors*⁵⁴, it was observed thus:

“10. In *Kamal Trading (P) Ltd. v. State of W.B.* (2012) 2 SCC 25 it has been held as under: (SCC pp. 29-30, paras 14-16)

“14. It must be borne in mind that the proceedings under the LA Act are based on the principle of eminent domain and Section 5-A is the only protection available to a

person whose lands are sought to be acquired. It is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the authority concerned, inter alia, that the important ingredient, namely, 'public purpose' is absent in the proposed acquisition or the acquisition is mala fide. The LA Act being an expropriatory legislation, its provisions will have to be strictly construed.

15. Hearing contemplated under Section 5-A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under Section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector under Section 5-A(2). As said by this Court in *Hindustan Petroleum Corpn. Ltd v. Darius Shapur Chenai* (2005) 7 SCC 627 the appropriate Government while issuing declaration under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf.

16. Sub-section (3) of Section 6 of the LA Act makes a declaration under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated under Section 5-A and the report made by the Land Acquisition Officer and his recommendations assume importance. It is implicit in this provision that before making declaration under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted under Section 5-A(2) of the LA Act. The recommendations must indicate objective application of mind.”

(emphasis supplied)

11. In *Usha Stud and Agricultural Farms (P) Ltd. v. State of Haryana* (2013) 4 SCC 210 it was held as under: (SCC p. 227, para 30)

“30. ... Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to

the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1)”

(emphasis supplied)

12. Further, in *Women's Education Trust v. State of Haryana* (2013) 8 SCC 99, this Court has held as under: (SCC p. 119, para 35)

“35. What is most surprising is that the High Court did not even deal with the issue relating to application of mind by the Government to the report submitted by the Land Acquisition Collector under Section 5-A(2) along with his recommendations. The documents produced before the High Court and this Court do not show that the State Government had objectively applied mind to the recommendations made by the Land Acquisition Collector and felt satisfied that the land in question deserves to be acquired for the purpose specified in the notification issued under Section 4(1). The record also does not contain any indication as to why the State Government did not consider it proper to accept the recommendations of the Land Acquisition Collector. Therefore, there is no escape from the conclusion that the impugned acquisition is ultra vires the provisions contained in Section 6 of the Act.” (emphasis supplied)

14. In the light of the foregoing cases, it is evident that the Government has to consider the report of the Land Acquisition Collector while making declaration of acquisition of land under Section 6 of the Act. Further, if the Government is coming to a conclusion which is contrary to the report, then the Government has to provide appropriate reasons for the same.”

114. In *Gurbinder Kaur Brar & Anr. v. Union of India & Ors.* (2013) 11 SCC 228 it was observed :

“9. We also agree with the learned counsel for the appellants that the report of the Land Acquisition Officer was vitiated due to total non-application of mind by the officer concerned to a large number of substantive objections raised by the appellants under Section 5-A(1). He mechanically rejected the objections and senior officers of the Chandigarh Administration accepted the report of the Land Acquisition Officer despite the fact that the same had been prepared in violation of Section 5-A(2) ”

115. In the instant case it is apparent from the report that there is no objective consideration of objections at any stage. The inquiry held and the report sent under section 5A of the Act was clearly influenced by the decision of the Cabinet taken before issuance of notification under section 4 of the Act to acquire land in certain J L numbers in particular mouza’ s as per the choice of location by TML which has prevailed whereas in the matter of acquisition of such vast area comparative fertility aspect of chunk of land to be selected ought to have been considered and land which is more or less barren ought to have been preferred which exercise has not been resorted to. Though the State Government could have taken decision

before issuance of notification under section 4 for setting up of project however it could not have taken decision to acquire particular land in various mouza' s before survey is undertaken as authorized by the provisions contained in section 4 of the Act, the action of the State has the effect of frustrating very purpose of holding inquiry under section 5A. The inquiry held under section 5A is a farce and an eyewash neither the Collector nor State Government considered the matter with objectivity as mandated. Inquiry has not been done with open mind with requisite fairness they were clearly influenced by decision of cabinet. Entire acquisition stands vitiated in the facts and circumstances of the case. The case need not be relegated to the stage of inquiry as project itself has been abandoned.

116. However, for enquiry under section 5A individual notices are not provided. It is not provided in the Act that individual notices should be issued. The publications as envisaged under section 4 are enough and are the only requirement of the law to be mandatorily observed pursuant to which objections under section 5A are required to be filed. The notification under section 4 is required to be published in the Official Gazette and two daily newspapers; out of that one newspaper shall be in the regional language, and public notice of such substance has to be given at the convenient places in the locality. Within thirty days the objections are to be filed under section 5A. Thus non-service of individual notices on farmers would not vitiate the enquiry.

117. For the aforesaid reasons, I agree with the ultimate conclusion of esteemed brother as to question nos.3, 4 and 5.

IN RE. QUESTION NUMBERS 6 TO 9

118. It appears that the award has been passed without issuance of notices to holders on the pretext that it was not possible to serve them due to prevailing situation. For determination of compensation individual notices are required to be issued. Section 9(1) requires the Collector to publish public notice for taking possession and for claims to compensation to be made. Section 9(3) requires the Collector shall serve notice to the same effect on the occupier if any, of the land and on all such persons known or seem to be interested therein etc. In case the person interested resides elsewhere notice has to be sent by post to the last known address or place of business which has not been followed in the instant case. In my opinion the service of personal notice is mandatory as required under section 9(3) of the Act. Non-compliance of the provision would render the award invalid requiring determination of compensation afresh at the same time it would not have the effect on the validity of the notification under section 4 and declaration made under section 6 of the Act. The award cannot be questioned in the writ jurisdiction and non-issuance of individual notices under section 9 would not vitiate the notification issued under sections 4 and declaration made under section 6 of the Act. However, the fact remains that proper procedure has not been followed in the instant matter. The question of adequacy of the compensation determined cannot vitiate the acquisition. It was also not disputed before us that after the award was passed on merits, further consent awards were passed in favour of certain persons for which

no authority or provision of law could be shown. Be that as it may. It would have no impact on validity of notification under section 4 or declaration made under section 6 of the Act.

119. In my opinion question number 7 as to determination of proper compensation cannot be considered in writ jurisdiction as any person aggrieved by inadequacy of compensation has the remedy to seek reference as provided in section 18 of the Act Accordingly I answer the question numbers 6, 7 and 8.

RELIEF

120. After acquisition of the land by WBDIC it granted lease to TML and handed over possession. Ultimately, the TML could not start operations as is apparent from its letter dated 28.9.2010. They had removed their equipment and machinery also. Though the project would have been beneficial, however in the circumstances it has moved out as environment could not be created for normal working of the plant as mentioned in letter of TML. The State Government has taken possession of the land from TML and TML has abandoned its project in the State of West Bengal and has shifted it to the State of Gujarat.

121. Possession has been taken ten years before from the landowners. In a case where there are no sale-deeds evidence forthcoming compensation is awarded to land-owners on annualized yield of 10 years as held by this Court in *Special Land Acquisition Officer v. Virupax Shankar Nadagouda*⁵⁵ and *Collector, Land Acquisition v. Gana Ram Dhoba* (1996) 1 SCJ 15. In the facts of this case it would be appropriate to direct that land is given back to all land owners since they have been deprived of the usufruct of the land for a decade as such the compensation paid to them shall not be recovered. They are permitted to retain it or claim it in full and final settlement of claim towards damages for deprivation of use of their land etc.

122. In view of determination on question numbers 3, 4 and 5 and due to violation of the provisions contained in section 5A of the Act, in the facts of the case to do complete justice between the parties in exercise of power under Article 142 of Constitution the entire proceedings pertaining to land acquisition are quashed and case is not relegated in the instant case to the stage of inquiry under section 5A of the Act as ordinarily resorted to, as the very purpose of acquisition has failed and directing an inquiry afresh would be an exercise in futility. The land shall be given back to the land owners and compensation if any paid to them shall not be recovered from them those who have not collected it are free to collect the same in lieu of damages for deprivation of possession for ten years.

123. The impugned orders are set aside, the appeals are allowed with the aforesaid directions. Parties to bear their own costs.

Judgment Referred.

¹(2008) 1 SCC 0728

²(1998) 1 SCC 0591

³*AIR 1962 SC 0764*
⁴*AIR 1963 SC 1890*
⁵*(1996) 8 SCC 0758*
⁶*(1985) 1 SCC 0591*
⁷*(2012) SLSCI 0492*
⁸*A.I.R. 1994 MP 0074*
⁹*(2010) Supp All. L.J. 1*
¹⁰*(1961) 2 SCR 0459*
¹¹*(1963) 2 SCR 0774*
¹²*(1971) 1 SCC 0671*
¹³*(1975) 4 SCC 0285*
¹⁴*(2012) 1 SCC 0792*
¹⁵*(2013) 1 SCC 0403*
¹⁶*(2005) 6 SCC 0745*
¹⁷*(2003) 10 SCC 0626*
¹⁸*(2014) 8 SCC 0804*
¹⁹*(2011) 9 SCC 0286*
²⁰*(1999) 6 SCC 0464*
²¹*(1980) 3 SCC 0141*
²²*(2013) 4 SCC 0210*
²³*AIR 1980 SC 0318*
²⁴*AIR 1964 SC 0072*
²⁵*(1999) 3 SCC 0422*
²⁶*(1975) 4 SCC 0298*
²⁷*(2009) 10 SCC 0115*
²⁸*(1977) 1 SCC 0133*
²⁹*(1966) 3 SCR 0885*
³⁰*(2008) 9 SCC 0552*
³¹*AIR 1955 SC 0810*
³²*(2007) 1 SCC 0641*
³³*(1983) 1 SCC 0228*
³⁵*(2010) 10 SCC 0282*
³⁶*AIR (1960) SC 1203*
³⁷*(1962) Supp. 2 SCR 0149*
³⁸*(1975) 1 SCC 0824*
³⁹*(1978) 2 SCC 0373*
⁴⁰*(1983) 4 SCC 0553*
⁴¹*(1994) 4 SCC 0675*
⁴²*(2009) 5 SCC 0242*
⁴³*(1981) 2 SCC 0362*
⁴⁴*(1989) 2 SCC 0754*
⁴⁵*(1990) 4 SCC 0207*
⁴⁶*(1999) 4 SCC 0011*
⁴⁷*(2005) 2 SCC 0673*
⁴⁸*(2011) 2 SCC 0132*
⁴⁹*(2011) 12 SCC 0615*
⁵⁰*(1989) 2 SCC 0754*
⁵¹*(2010) 6 SCC 0384*
⁵²*(2013) 16 SCC 0660*
⁵³*(2013) 4 SCC 0210*
⁵⁴*(2014) 3 SCC 0203*
⁵⁵*(1996) 6 SCC 0124*

