

GUJARAT HIGH COURT

Ashokkumar Gordhanbhai

Vs.

State of Gujarat

Spl. Civil Appln. Nos. 903, 1035 and 989 of 1964, Nos. 101, 4, 5, 6 and 43 of 1965 and No. 1023 of 1967

(P.N. Bhagwati, C.J. and N.K. Vakil, J.)

29/30.07.1968. 31.07.1968

JUDGMENT

N.K. Vakil, J.

1. These Special Civil Applications belong to a group of 21 petitions which arise out of land acquisition proceedings taken by the State at various places after declaring that the respective lands are needed to be acquired at the public expense for the purpose, generally speaking, for establishing industrial township or estate for heavy and medium or light industries. As some common questions of law and even to some extent of facts arise, we have heard all these petitions together. All the same, we have thought it expedient not to dispose them of by a single judgment. But out of these, seven petitions refer to lands at Karamsad in Anand Taluka which are sought to be acquired by the same notifications under secs. 4 and 6 of the Land Acquisition Act (hereafter referred to as the Act) and therefore, it will be convenient to dispose them of together by this judgment. We shall also dispose of Special Civil Applications No. 43 of 1965 and 1023 of 1967 wherein the lands concerned are of village Odhav, City Taluke, Ahmedabad, by this judgment because the contentions raised therein are mostly the same as in the petitions relating to lands at Karamsad. We will be stating necessary relative facts of all these petitions and will also deal with special, points if any, raised In the respective petitions over and above the common points.

2. In Special Civil Application No. 903 of 1964, the petitioner and the third respondent are owners of land bearing S. No. 778 of village Karamsad admeasuring about 3 Acres S Gunthas. They had purchased the land on 27th July 1960 with a view to construct a factory thereon for curing tobacco. An application was made by them on August 17. 1962 for permission to use the land for non-agricultural purposes. However, the Government of Gujarat in the meantime issued a notification dated 27th August 1962 under sec. 4 of the Act which was published in the Gujarat

Government Gazette Part I Supplement, dated September 20, 1962. By the said notification, it was notified that the said land was likely to be needed for the purpose of the Charotar Gramodhdhar Sabakari Mandali Ltd. On the 19th of November 1962, the Prant Officer refused the permission to the petitioners to put land under non-agricultural use in view of the above notification under sec. 4 of the Act. Thereafter the Government issued a notification dated 26th July 1963 published on the 1st August 1963 whereby the prior notification was cancelled. On the 26th of July 1963, Government issued another notification under sec. 4 of the Act notifying that the said land inter alia was likely to be needed for the public purpose viz. for establishing industrial township for heavy and light industries. After the objections were filed and heard, the Government issued a notification under sec. 6 of the Act which was published on 29th October 1964 stating inter alia that the Government of Gujarat was satisfied after considering the report of the Collector under sub-sec. (2) of sec. 5A of the said Act that the said lands were needed to be acquired at the public expense for public purpose viz., for establishing industrial township for heavy and light industries and declaring under the provisions of sec. 6 of the Act that the said lands were needed for a public purpose or for a company as specified in column 4 of the schedule to the said notification. By the said notification urgency clause was also applied. There are further averments of facts in the petition but we need not state them here as they have not any bearing on the points raised before us at the bearing, for our consideration. But a set of facts which need be noted as they have a bearing on the controversy between the parties, is that before sec. 6 notification was issued. Government had published two important resolutions declaring its general policy in respect of the acquisitions made for the purpose of establishing the industrial township for heavy and light or medium industries. The first is dated 30th June 1964 copy whereof is produced. The only thing at this stage that need be mentioned is that the said resolution is purported to have been published after reading letters dated 19th February 1964 and the 6th of May 1964 from the Chief Executive Officer, Gujarat Industrial Development Corporation, Ahmedabad. By the said resolution, the Government accepted in principle the proposal of the Gujarat Industrial Development Corporation (hereafter referred to as the Corporation) to acquire lands for implementation of the scheme of acquisition of land for Industrial Areas and satellite Townships by Government from public revenues and then to place the lands so acquired at the disposal of the Corporation under sec. 32 of the Gujarat Industrial Development Act, 1962 (hereafter referred to as the Development Act).

3. The second resolution is dated 19th August 1964. It also is preceded by the statement that the two letters of the Corporation dated 19th February 1964 and 6th May 1964 were read. The resolution then says that the Government directs that the lands acquired by the Government at public expense shall be placed at the disposal of the Corporation under sec. 32 read with sec. 13(2)(g) of the Development Act on certain conditions. At this stage, it will be sufficient to refer to only the first two of them and they are:

"(i) The market value of the lands that may be paid as compensation for the lands acquired plus the actual cost of establishment charges incurred by the Government for

acquisition of lands including joint measurement charges shall be treated as a loan to the Gujarat Industrial Development Corporation, Ahmedabad.

(ii) The loan shall bear interest at the rate of 6 per cent per annum and the loan amount together with interest thereon shall be repaid to Government within fifteen years in half yearly instalments."

As noticed, both these resolutions refer to the two letters dated the 19th of February 1964 and 6th of May 1964 of the Chief Executive Officer of the Corporation. They have now been produced by the State at our instance as the learned Advocates on both the sides wanted them on record to enable the Court to fully appreciate their respective submissions. We shall have occasion to refer to their contents and effect later. The other fact that need be noted in respect of this petition is that after the petition was filed on the 20th November 1964, the State Government issued an erratum to delete the words "or for a company" from the public purpose stated in column 4 of the Schedule of sec. 6 notification. This was published in the Gazette on the 20th of January 1965. The last document which requires to be noted is the resolution of the Government dated the 29th of February 1968. By this resolution the Government sanctioned an amount of Rs. 2,87,600/- for payment of compensation to interested persons whose lands have been acquired from Karamsad, Taluka Anand. While sanctioning this amount, the Government has given certain directions. We shall refer to this resolution again at a later stage when we discuss one of the contentions raised by the petitioners.

4. The petitioner challenges sec. 4 and sec. 6 notifications as being invalid and ineffective on numerous grounds stated in the petition but at the hearing Mr. S. B. Vakil, the learned Advocate for the petitioner has rested his attack only on the submissions mentioned hereinafter and has not pressed the rest of them. On behalf of respondent No. I the State Government, in the affidavits in reply to the petition and the rejoinder, all the contentions raised by the petitioner have been controverted and the stand of the State has been put forward. We shall refer to such parts of them as have a bearing on the contentions raised at the hearing when we deal with these contentions. In this petition, the Corporation is not made a party.

5. The submissions made on behalf of the petitioner in Special Civil Application No. 903 of 1964 by Mr. S. B. Vakil are as follows:-

I. The notification under sec. 6 of the Act is vague and ineffective as it contains a declaration that land is needed for "public purpose" or "for a company", and this is no declaration at all in accordance with the provisions of sec. 6 of the Act.

II. The Gujarat Industrial Development Act (XXIII of 1962) is outside the legislative competence of the State Legislature and therefore void. The Gujarat Industrial Development Corporation is a creature of this Act and therefore it has no valid existence, consequently there is no public purpose of the Corporation and the acquisition is therefore illegal and the exercise of the power is thus colourable.

III. Assuming the acquisition is for a public purpose, as the amount of compensation is to come out of the funds of the Corporation, the proviso to sec. 6(1) of the Act is not complied with and therefore sec. 6 notification is invalid and ineffective. It is colourable exercise of power which vitiates sec. 6 notification and the acquisition proceedings.

IV. The declaration in sec. 6 notification that the lands are needed for public purpose is colourable exercise of power in as much as the scheme that the Government has made for the development of these lands is to place it at the disposal of a body viz., Corporation which is not legally constituted. It may be mentioned that grounds Nos. 2 and 3 raised by Mr. Vakil have been raised by all the petitioners.

6. The petitioners in Special Civil Application No. 1035 of 1964 purchased 9 acres 29 gunthas of S. No. 368 of Karamsad village of Anand Taluka out of 11 acres 14 gunthas, for Rs. 95,000/- on the 21st of November 1964 from John alias Nathubhai Lalbbai bin Babhaibbai and Bai Hanna alias Pani of Anand. The original owner was one Lalbbai Babhaibbai. He was the husband of the said Bai Hanna and father of John alias Natbubhai. On the date when the sale deed was passed, Lalbhal was dead. The relevant sec. 4 notification and sec. 6 notification are the same as in the prior petition i. e. of the 26th of July 1963 and 29th of October 1964 respectively. Some special facts that require to be noted in respect of this petitions are that it is inter alia alleged that no notice inviting objections under sec. 5A inquiry was served upon the petitioner or his predecessor-in-title. It is his case that at that date Lalbhai was alive. He further alleges that notice under sec. 9 was also not served on him or his predecessor-in-title. The requirement of bearing of objections after giving notice to file such objections, if any, under sec. 5A inquiry and notice under sec. 9 are conditions precedent and the petitioner alleges that as they were not complied with, sec. 6 notification and the acquisition proceedings are invalid. In this petition. the State of Gujarat is joined as respondent No. 1, the Special Land Acquisition Officer as respondent No. 2 and the Gujarat Industrial Development Corporation as respondent No. 3. In the affidavit filed in reply by the State, allegations and contentions raised in the petition, have been refused and the stand of the State Government has been stated. We shall refer to such of them hereafter as it may be found necessary to refer to while considering the contentions raised. On behalf of the Corporation, no affidavit has been filed though it has appeared through an advocate, The petitioner in this petitions, challenges the acquisition on a number of grounds but Mr. V. B. Patel, the learned Advocate appearing on behalf of the petitioner has only pressed the following grounds before us:

I. Assuming that the acquisition is by the Mate for a public purpose at public expense, sec. 4 notification cannot be availed of as sec. 4 notification states that land was likely to be needed for establishment of industrial township for heavy and light industries by the Gujarat Industrial Development Corporation and not by the State whereas sec. 6 notification declaration was for acquisition by the State for public purpose and not by the Corporation.

II. The Gujarat Industrial Development Act (XXIII of 1962) is ultra vires the legislative

competence of the State Government and therefore assuming the lands are to be placed at the disposal of the Corporation, the acquisition is illegal and ultra vires as its own constitution is non est.

III. The notification under sec. 6 is void as no notice was given to the predecessor-in-title of the petitioner to submit objections and thus no opportunity was given to be heard under sec. 5A of the Act.

IV. Assuming the acquisition is for a public purpose, the acquisition is for the Gujarat State Industrial Development Corporation at the expense of the Corporation and therefore the proviso to sec. 6(1) is not complied with and the notification under sec. 6 is consequently illegal. In any case the issuance of sec. 6 notification and the acquisition proceedings are colourable exercise of power.

V. Having regard to the facts of this case, it must be held that the acquisition is for the Gujarat Industrial Development Corporation under sec. 30 of Act XXIII of 1962 read with sec. 6 of the Land Acquisition Act and therefore the notifications under secs. 4 and 6 declaring that the lands are required for the public purpose are issued in colourable exercise of power and therefore they are ineffective and invalid.

VI. The declaration in sec. 6 notification that the lands are needed for public purpose is colourable exercise of power in as much as the scheme, the Government have made for the development of these lands, is to place it at the disposal of a body viz. Corporation which is not legally constituted.

It may be mentioned that out of the grounds raised, grounds Nos. 1 and 3 are peculiar to this petition.

7. In.. Special Civil Application No. 101 of 1965, the petitioners are the owners in possession of 1 acre 25 gunthas of hind situated on the northern side of S. N. 368 of village Karamsad. The petitioners have given facts and raised contentious similar to those in Special Civil Application No. 1035 of 1964 wherein the remaining part of S. No. 368 is affected by the acquisition Mr. V. B. Patel appears for the petitioners and he has made the same submissions except the one covered by ground No. 3 as in the case of Special Civil Application No. 1035 of 1964. Therefore we have not thought it necessary to repeat the facts or the submissions as they will not require special consideration. In this petition also the Corporation is respondent No. 3.

8. In Special Civil Application No. 989 of 1964 the petitioner is the owner of S Nos. 378/1, 381, 439/4 and 440 of village Karamsad, Taluka Anand. In Special Civil Application No. 4 of 1965, the petitioner is the owner of lands S. No 378/2, 380. 439/1, 439/2 and 439/3 of village Karamsad. In Special Civil Application No. 5 of 1965 the petitioner is the owner of land bearing S. No. 770 of village Karamsad and in Special Civil Application No. 6 of 1965, the petitioners are the owners of land S. Nos. 777/1-2 of village Karamsad. In neither of these four petitions, the Corporation is made a party. In all these petitions, Mr. A. H. Mehta, appears for the petitioners and has raised the same grounds as has been raised by Mr. Patel except grounds Nos. 1 and 3. As

the facts relevant for considering the submissions made before us are also similar to the facts of Special Civil Application No. 903 of 1964, they need not be stated.

9. In Special Civil Application No. 43 of 1965, the petitioner No. 1 is the owner of lands bearing S. Nos. 543, 544/2, 545/I/1, 545/2/2, 547/2/1, 547/2/2 and 548 of village Odhav in the City Taluka District Ahmedabad admeasuring in all about 9 acres 4 sunthas. The second petitioner is the owner of S. No. 544/1 admeasuring about 1 acre 27 gunthas of village Odhav. The first petitioner has also an interest in land S. No. 544/1 belonging to the second petitioner. The Government issued sec. 4 notification dated 7th December 1961 notifying that the lands inter alia were likely to be needed for the public purpose viz., for establishing industrial town for heavy and medium industries. The Government thereafter issued notification dated 31st October 1964 under sec 6 which was published in the Gazette on 19th November 1964. It was declared therein that the Government was satisfied after considering the report of the Collector under sub-sec. (2) of sec. 5A that the land S. No. 548/P admeasuring 29 gunthas inter alia was needed to be acquired at public expense for the alleged public purpose of establishing industrial town for heavy and medium industries. Amongst other things the notification further stated that the acquisition of the said land was urgently necessary and it was directed that under sub-sec. t 1) of sec. 17 of the said Act the Collector shall on expiration of 15 days from the publication of the notice relating to the said land S. No. 548/P inter alia under sub-sec. (1) of sec. 9 of the Act, take possession of all the arable lands. The Government simultaneously on the same date that is to say 31st October 1964 published in the Gazette on November 19, 1964, a notification under sec. 6 declaring that S. Nos. 543, 544/1 544/2, 545/1/1, 545/2/2 and 547/2/P were needed to be acquired at the public expense for the alleged public purpose of establishing an industrial town for heavy and medium industries. No urgency clause was applied in respect of these lands. Mr. S. B. Vakil, the learned Advocate appearing for both the petitioners at the hearing stated that petitioners Nos. 1 and 2 both did not want to press their petition In respect of the land covered by the second notification which is Ex. 'C' attached to the petition where the urgency clause is not applied, and the petitioner No. 1 only pressed the petition in respect of lands S. No. 348/P which was covered by notification Ex. 'B' attached to the petition and in respect of which urgency clause has been applied. We shall therefore not be concerned with the notification Ex. 'C' and the lands covered thereunder. Mr. Vakil has raised the same contentions in this petition as he has raised in Special Civil Application No 903 of 1964 in submissions Nos. 2, 3 and 4. We therefore, need not repeat them here again. The Corporation is not made party in this petition.

10. In Special Civil Application No. 1023 of 1967, the petitioner is the owner of land bearing S No. 648 admeasuring 2 acres and 23 gunthas together with the Kharaba of 2 gunthas situated in village Odhav, Taluka City. District and sub-district Ahmedabad, It is further allege³ that the said land was leased by the 4th respondent to the petitioner by a registered lease deed dated 5th December 1964. The said lease deed is a registered lease-deed for a period of 25 years with an option to purchase the land. It also contains an option to purchase the land at the rate of Rs. 50/- per squire yard during the period of the said lease. The sec. 4 notification dated 7th December

1961 was published on 11th December 1961 which was in respect of a very large number of survey numbers including S. No. 648 of the petitioner. It may be mentioned that it is the same notification in which the land of the petitioners in Special Civil Application No. 43 of 1965 was notified. Sec. 6 notification dated 31st October 1964 was issued by the Government declaring that the lands mentioned in the Schedule were needed to be acquired at the public expense for the public purpose mentioned in column 4 to the Schedule. This is the same notification as notification Ex. 'C' of Special Civil Application No. 43 of 1965. Mr. A. H. Mehta, the learned Advocate appearing for the petitioners agitated the same point as he has in Special Civil Application No. 989 of 1964 and others.

11. We first propose to deal with such of the grounds which are peculiar to some of the petitions and then proceed to consider the contentions which are commonly raised in all the petitions.

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(His Lordship disposed of other point raised in Spl. C. A. No. 903/64 holding that the Gujarati notification clearly conveyed to the public that the land was needed for a public purpose and sec. 6 notification was not invalid. His Lordship further disposed of the preliminary point in Spl.C A. No. 1035/64 and Spl. C. A. No. 101/65 by holding that sec 4 notification was of an expediting nature and there was nothing in law to prevent the Government to decide to change or drop the instrumentality through which the public purpose was stated in sec. 4 notification to be implemented. His Lordship further observed:)

16. The other contention raised by Mr. Patel and which affects Special Civil Application No. 1035 of 1964, is to be found in ground No. III that no notice was served either on the petitioner or his predecessor-in-title to submit objections in the inquiry to be held under sec. 5A of the Act. The petitioner has made a specific allegation in para 13A of the amended petition that notice inviting objections, after the publication of sec. 4 notification, was not given to the petitioner or his predecessor- in-title as stated hereabove. At the hearing, however. Mr. Patel confined his contention to the want of notice to his predecessor-in-title because obviously on that date he had not become owner of the property. It has also been averred in the petition that notice under sec. 9 was not served either on himself or on his predecessor-in-title. It is urged that filing of objections on the notice being served under sec. 5A is a condition precedent to the issuance of sec. 6 notification and the serving of notice under sec. 9 is a condition precedent to the award being made and this having not been done, sec. 6 notification is invalid and the acquisition is also illegal. As against the allegations made by the petitioner, in the affidavit filed in reply on behalf of the State, we find that as regards the notice under sec. 9 there is a positive assertion that the notices under secs. 9 and 10 of the said Act were served on the interested persons and they were also published near the lands to be acquired. In continuation of the above assertion it has been further stated that the notice regarding the land S. No. 368 of Karamsad-subject matter of the present petition-was issued and tried to be served on the occupant of the land Shri Lalbbai Bavabhai of Anand who is shown as the occupant in the revenue records but the same had

returned unserved as the occupant had expired. These are positive assertions made in respect of section 9 and section 10 notices. Now, we are not called upon to decide this controversy in respect of sec. 9 notice because as Mr. Patel has not pressed his contention in respect of sec. 9 notice and we are only concerned with non-service of notice for filing objections in the inquiry under sec. 5A. As regards the notice to file objections, if any, in sec. 5A inquiry, it is contended on behalf of the petitioner that the statement in the affidavit filed on behalf of the State is vague and not at all specific. There is no assertion as is the case in respect of sec. 9 notice that the notice inviting objections was also served on Lalbbai. It is true that in the affidavit a reference is made to the allegations in the petition in respect of want of notice for filing objections but what it states in respect thereof is only: "I therefore deny that the notice inviting objections has not been served upon the petitioner or his predecessor-in-title." This averment is a vague denial. The opportunity to be given to appear and object in the inquiry under sec. 5A is an important right given to the persons interested in the land. Having regard to the unsatisfactory nature of the reply in the affidavit of the State, we thought it proper to give an opportunity to the learned Advocate General to satisfy us by producing any document or affidavit to show that the service was made on the predecessor-in-title of the petitioner, that is Lalbbhai. We were shown a copy of the notice which purported to bear the signature of some one. The learned Advocate General frankly conceded that he was not in a position to assert that this is the signature of Lalbbhai himself or some one who had the authority to accept service on his behalf. We therefore gave a further opportunity to enable the State to file an affidavit of a person alleged to have served the notice on Lalbbhai. We were however informed after two days that it was not possible for the Government to file any such affidavit. The result is that we are far from being satisfied that such a notice was served on the predecessor of the present petitioner. But then the question arises, whether there is any provision of law that requires such a notice to be given individually to persons interested. Sec. 4(1) and sec. 5A of the Act are silent about it. But it was pointed out by Mr. Patel that the State Government under the powers vested under sec. 55 of the Act has framed rules for the guidance of the officers dealing with the provisions of sec. 5A. Rule I thereof reads as follows:

"1. Whenever any notification under sec. 4 of the Act has been published but the provisions of sec. 17 have not been applied and the Collector has under the provisions of sec. 4(1) issued notices to the parties interested : and on or before the last day fixed by the Collector in these notices in this behalf any objection is lodged under sec. 5A(2), firstly, the Collector shall record the objection in his proceedings, secondly, the Collector shall consider whether the objection is admissible according to these rules."

Mr. Patel urged that this rule by necessary implication requires the Collector to issue notices to the parties interested and fixing time to submit objections.

17. The learned Advocate General, however, contended that none of the provisions of the Act requires any such notice being given and the rule even if it implies any such notice, cannot provide anything that conflicts with the provisions of the Act. He pointed out that sec. 4 only lays

down that:-

"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"

The sec. 5A itself under which the right to file objections is claimed even does not lay down that any individual notices should be given to all persons interested. It only reads G. R. 65

"Any person interested in any land which has been notified under sec. 4, sub-sec. (1).-may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be."

The learned Advocate General had however to concede that the wordings of the rule are capable of being construed by necessary implication as providing for such individual notice. But he argued that such a construction should not be placed as it would go beyond the scope of sec. 4(1) and would conflict with the provisions of sec. 4 and sec. 5A. He further argued that there is no statutory obligation cast by the Act and no such statutory obligation be read by so construing the rule. Sec. 4 notification is published only at the exploratory stage and in many cases it would cast great burden on the Government to serve on all persons interested, as large tracts of land may only be indicated by locality as likely to be needed for acquisition. Therefore the Court should not put such a burden, by placing the construction canvassed for on behalf of the petitioners.

18. We are not impressed by this submission of the learned Advocate General. It is true that neither sec. 4(1) nor sec. 5A provides for any such personal notice but the State Government itself under the powers vested under sec. 55 of the Act has framed rules for the guidance of the officers in dealing with objections lodged under sec. 5A and Rule No. 1 itself contemplated the giving of such a notice. The learned Advocate General contended that the rule is framed on an obvious wrong construction of sec. 4(1) because it says: "and the Collector has under the provisions of sec. 4(1) issued notices to the parties interested" and as seen sec. 4(1) does not provide for giving of any such personal notice. True it is that the rule is not happily worded. But merely because a suggestion has wrongly crept into the rule to the effect that the notice is to be issued under sec. 4(1), it cannot be said that the whole sentence comprising of the words "and the Collector has under the provisions of sec 4(1) issued notice to the parties interested: and on or before the last day fixed by the Collector in those notices in this behalf" should be ignored. The construction canvassed for by the learned Advocate General refuses to give effect to all these words. This rule by making this provision cannot be said to provide something which conflicts with the provisions of sec. 4,1) or sec. 5A. It only provides something under the statutory powers vested in the State Government about which sec. 4(1) and sec. 5A are silent; but it is neither beyond the scope of sec. 4(1) or sec. 5A nor in conflict with the provisions of either of these two sections. On he contrary, this rule is framed for carrying into effect the valuable right, slender is it

may be, of filing objections in the inquiry to be held under sec. 5A. We are reluctant to place a construction which is based on the argument of misconstruction of the statutory provision of sec. 4(1) by the rule making authority, in order to render the important and integral part of the rule, ineffective. True it is that the words: " under the provisions of sec. 4(1)" are incongruous and inapt as sec. 4(1) provides for no such notice. But we are satisfied that the rule-making authority have intended and such an intention can be culled out by necessary implication that personal notice be given to persons interested. We are placing this interpretation under a conviction that the rule making authority could not have intended that if sec. 4(1) does not provide for giving of personal notice, no such personal notice should be given. It could not ha%e intended to signify, in our view, what these words "udder the provisions of sec. 4(1)" do and in interpreting the rule as we do, we are only correcting the effect of careless language and give effect to the true intention or the rule making authority. We are also not able to agree that we should not so interpret the rule as to impose any statutory obligation, as it is likely to lay a great burden on the authority in the acquisition proceedings. But the learned Advocate General fairly conceded that as a matter of fact such personal notices are being issued. In our view this right given under sec. 5A is an important right and to make it effectual, it is but desirable that the persons interested and at least the persons in occupation about whose interest the Government in normal circumstances would be expected to know, are given personal notice to file their objections. In a proceeding where a person is to be deprived of his property against his will, mere consideration of difficulty or extra burden being thrown on the authority cannot be any criterion to put a construction which would adversely affect an important right of the subject. The result of this conclusion is that notice required to be served upon the predecessor-in-title of the petitioner has not been served and it being a condition precedent to the issuance of sec. 6 notification, the notification is invalid and it will have to be struck down on this ground alone. We shall order accordingly. We may observe here that so far as this case is concerned, the predecessor-in-title of the petitioner, Lalbhai was in actual occupation of the land and that the record of right would also show him to be the occupant of the said land.

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[His Lordship further held that there was no ground whereupon to hold that Government acted in colourable exercise of the powers under sec. 6 of the Land Acquisition Act read with sec. 30 of the Gujarat Industrial Development Act. His Lordship also observed that it was not necessary to enter into the controversy as to whether the said Development Act does or does not lie within the Legislative competence of the State Legislature and held that there was no provision or law which would prohibit the Government under the said notification to itself implement the public purpose or implement it through any other agency validly available. His Lordship further observed]

22. Now we proceed to deal with the only ground that remains and it raises a contention which in most of the petitions, in one form or another, has been agitated by the petitioners. As stated above, all the petitions were heard together and all the learned Advocates for the respective petitions were heard on the point. As we propose to deal with the point fully in this petition, we

shall deal with all the aspects on the point urged before us by the learned Advocates of all the petitioners so that we may not have to deal with the point all over again in the respective petitions except where some material facts are different which may require special consideration. The substance of the case of the petitioners on this point is that on the facts established, the requirements of the proviso to sec. 6(1) of the Act have not been complied with and therefore the notifications issued under sec. 6 are invalid and ineffective. No land can be acquired for a public purpose unless the compensation to be awarded for the acquisition of land which has been declared to be needed for a public purpose is to be paid wholly or partly out of the public revenue or some fund controlled or managed by a local authority. It is their case that in the present matters, the entire cost of the acquisition is to come out of the funds of the Corporation which are neither public revenues nor funds controlled or managed by a local authority. Therefore, the condition precedent for acquisition of land for 'public purpose' has not been complied with and sec. 6 notification and all subsequent proceedings are invalid. They contend that though by an arrangement arrived at between the Government and the Corporation, as indicated by the documents on record, particularly resolution dated the 19th of August 1964, it was decided that the amount to be paid as compensation by the Government in the first instance will be treated as a loan which will be repayable by the Corporation with six per cent interest in fifteen years by half yearly instalments, it was notified that the lands are needed to be acquired at public expense for public purpose. The effect of the arrangement as regards incurring the cost of acquisition is that in substance and in reality the whole cost of the acquisition is to be borne by the Corporation not by the public revenues. The acquisition proceedings are thus bad in law and in colourable exercise of powers of Government.

23. As against this, the stand of the State Government as disclosed by the affidavits filed on its behalf is that the requirements of the proviso to sec. 6(1) have been complied with; that the whole compensation is paid out of public revenues and not from the funds of the Corporation and the lands are to be acquired for public purpose indicated in the notifications. The acquisition is not for the Corporation, at its cost or for a company. It is further contended that when the land is taken possession of t,n the completion of the acquisition, the same will vest in Government free from all encumbrances. Government will then be at liberty to develop the land for the purpose for which it is acquired or it may also decide to place it at the disposal of the Corporation for the purpose of development under the provisions of sec. 32 of the Development Act on conditions that may be fixed. It is further contended that the State is competent to recoup the cost of acquisition directly from the industries if the land is developed by the Industries Department of the Government. However in respect of lands agreed to be placed at the disposal of the Corporation for the purpose of development, Government has decided as per Government Resolution dated 19th August 1964 that the capital cost should be recouped in the manner provided in the said resolution. According to the Government, this is a contingency that arises subsequent to a valid acquisition where initially the cost of acquisition is to come out of public revenues and the fact that the amount of compensation paid by the Government is to be treated as a loan to the Corporation, in such circumstances, cannot invalidate the notification or the

acquisition. It is also denied that the expenditure of compensation for all or any of the acquired lands is an expenditure based on any existing arrangement between the State and the Corporation. It is also denied that the amount paid as compensation for acquisition is or must be treated as the funds of the Corporation for any of the reasons alleged by the petitioners. It is denied that there was any colourable exercise of power, and sec. 6 notifications in the respective petitions are therefore valid and effective.

24. Before we proceed further. it will be convenient to acquaint ourselves with some of the main provisions of the Development Act which has been heavily leaned upon by the State for the stand it has taken and to which our attention was drawn.

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[His Lordship after discussing the various provisions of the Gujarat Industrial Development Act. further observed]

26. The learned Advocate General, after having drawn our attention to the scheme of the Development Act and the several of its provisions, more particularly stressed the difference between sec. 30 and sec. 32. There can be little doubt that there is a material difference between the provisions of sec. 30 and 32 as pointed out hereabove. The learned Advocate General further submitted that the provisions of sec. 30 certainly registers a departure from the provisions of the Land Acquisition Act. He also pointed out to us that this Act has received the assent of the President and therefore it can legally enact provisions which may override the provisions of the Central Act. We are, however not concerned with sec. 30 in this case as it is not the case of the State that it was an acquisition under sec. 30 and as we have already indicated, the facts disclosed in these cases even make it impossible to hold that the acquisitions are under sec. 30. We are also in agreement with the learned Advocate General that sec. 32 is the provision which would enable the Government after acquisition is made by the Government at public expense to place the land at the disposal of the Corporation on terms and conditions which may be fixed by the Government in consultation with the Corporation and which may under certain circumstances include the term or condition of recouping from the Corporation the capital expenditure made by the Government for acquisition if the Government were to decide upon such a condition. This aspect however of the submission of the learned Advocate General, that in the present case the acquisition is by the State Government for a public purpose at the cost of public revenues and after the land vests in Government, the lands are merely to be placed at the disposal of the Corporation to be dealt with on conditions settled, requires a close scrutiny as it is the main point of controversy between the parties. It is true, as pointed out by the learned Advocate General that though the Corporation is an independent entity capable of holding and acquiring property and having its own funds and has been empowered to carry on functions laid down in sec. 13 and deal with and utilise the property and funds, the functioning and scope thereof are highly circumscribed by the provisions that lay down variety of Governmental control. The effect thereof on the question on hand will be considered if needed later on. However, one thing that

needs to be noted and with which topic we are directly concerned is that sec. 19(1)(a) lays down that advances and loans from the State Government shall also form part of its funds and sec. 29 as seen provides for advances, loans etc on conditions which the State Government may determine in consultation with the Corporation.

27. We may now refer to sec. 6(1) of the Act, non-compliance with the requirements whereof is the basis of this controversy between the parties. Sub-sec. (1) provides that subject to the provisions of part VII of the Act, on the satisfaction being reached by the State Government after considering the report, if any, under sec. 5A, that any particular land is needed for a public purpose, a declaration shall be made to that effect. Similarly such a declaration can be made if the State Government is satisfied that it is needed for a company. The declaration has therefore to be either for some specific public purpose or for any specific company. But this power vested in the Government is circumscribed and made to depend on the fulfilment of the conditions laid down in the proviso. That this is so is beyond the scope of any controversy or dispute. The proviso definitely says that no declaration as authorised by sub-sec. (1) will be made unless two conditions are fulfilled. They are that if it is decided to issue a declaration that land is needed for a public purpose, then it must also be decided that the compensation awarded for such property is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. But if it is decided to issue a notification that the need is for a company then it must be decided that the whole of the compensation to be awarded for the land is to be paid by the Company. These are conditions precedent laid down by the Legislature and failure to comply with them will necessarily make the declaration under sec. 6 null and void and consequently all the proceedings that follow thereafter. From this it is clear that whenever the Government desires to acquire any land for a public purpose, the compensation must be paid wholly or partly from public revenues or from some fund controlled or managed by a local authority. If not the notification will be invalid and ineffective. In the matters before us it is not claimed that the Corporation is a local authority and therefore that question does not require any consideration and our discussion hereafter shall be confined to payment from public revenues. This view that we have taken of the contents and scope of sub-sec. (1) of sec. 6 and its proviso receives support from a number of decisions of the Supreme Court. We rest content by making reference to two of them: *Valjibhai v. State of Bombay*¹ and *Shyambehari v. State of Madhya Pradesh*² The proviso to sub-sec. (1) of sec. 6 makes it apparent that at the date of the publication of sec. 6 notification in the case where the land is declared to be needed for a public purpose, the State Government must also decide that the compensation to be paid for the acquisition is to be paid wholly or partly from public revenues. This decision must continue till the payment is actually made. It will not be sufficient to take such a decision at the date of the publication of the notification and then change it and the payment can then wholly be made otherwise than from public revenues. Therefore, it would not be enough to establish that at the stage of sec. 6 notification Government had decided that the compensation to be paid is to be paid partly or wholly from public revenues. It will have further to be established that the decision was adhered to till the payment of compensation and it was in substance and in reality made wholly or partly

¹ A.I.R. 1963 S.C. 1890

² A.1 R. 1965 S.C. 427

from public revenue. This proposition is not disputed either by the learned advocates for the petitioners or the learned Advocate General. As a matter of fact, both sides made their submissions on this common basis. The question then that requires to be dealt with and decided is, is there a decision of the State Government at the date of the publication of sec 6 notification in the respective petitions that the compensation to be paid for the acquisition is to be paid wholly or partly from public revenues and has that decision been followed and payment in substance and in reality can be said to have been made from public revenues.

28. In this judgment, it may be recalled, we are dealing with land covered by two notifications only, namely lands situated at Karamsad, Taluka Anand which are the subject-matters of seven petitions and lands situated at Odhav, City Taluka, Ahmedabad are concerned in two petitions. It may be helpful to note at this stage the chronological order of some important documents concerning these two groups of lands. Documents concerning the Karamsad group are:-

Sr. No	Date	Description
(1)	1-8-1963	Notification dated 26th July 1963 under sec. 4, in respect of lands admeasuring 387 acres, including the lands of the petitioners, was published.
(2)	19-2-1964	First letter of Mr. M. A. Malek, Chief Executive Officer of the Corporation to the Government inter alia stating some difficulties likely to cause delay if acquisition is made under sec. 6 read with sec. 30 the Development Act and suggesting that acquisition be made under section 6 of the Act by the Government from Government money and ultimately the lands be

transferred to the corporation for development.

- (3) 6-5-1964 Second letter of the Chief Excusive Officer of the Corporation confirming the prior letter and refering to the legal advice received and the proposal to acquire the lands under sec. 6 of the Act read with sec. 32 of the Development Act.
- (4) 30-5-1964 Government Resolution which refers to the above two letters inter alia stating that the proposal of the Corporation is accepted in principle to acquire the lands from public revenue and then place the lands acquired at the disposal of the Corporation.
- (5) 19-8-1964 Second Resolution of the Government wherein it is stated that the lands acquired by Government under the policy adopted by the prior resolution from the public revenue shall be placed at the disposal of the Corporation under sec. 32 and lays down the terms and conditions on which they will be done.
- (6) 29-10-1964 Sec. 6 notification dated 25th October 1964 in respect of a number of lands at village Karamsad and village Mogri of Anand Taluka

which includes the lands of all the concerned petitioners.

- (7) 29-2-1968 Resolution of Government sanctioning the amount for acquisition and laying down how this amount should be treated as a loan to the Corporation.

So far as the petitions in respect of lands at Odhav are concerned, the only difference to be noted is about the dates and contents of secs. 4 and 6 notifications and with respect to the last resolution passed by the Government.

- (8) 7-12-1961 Sec. 4 notification published, affecting a large number of lands at several villages including the concerned lands at village Odhav.

- (6) 19-9-1964 Sec. 6 notification in respect of lands in Special Civil Application No. 43 of 1965

- (10) 31-10-1964 Sec. 6 notification dated 19th November 1964 in respect of the concerned lands at Odhav in Special Civil Application No. 1023 of 1967 published.

- (11) 14-10-1965 Resolution of Government sanctioning the amount for acquisition.

The common important facts to be noted at this stage in respect of the acquisition of lands of both these villages is that the sec. 6 notifications are subsequent to the letters from the Corporation and the first two resolutions made by the State. We may also mention that the learned Advocate General pointed out and it is not disputed that by way of practice followed in the erstwhile State of Bombay and thereafter in this State, executive governmental acts were regarded as resolutions and the three resolutions in the case are of the same nature. In our view however that fact does not affect the question posed for our decision. one way or the other.

29. The above discussion would show that in the ultimate analysis the broad points that arise for determination are:

I. Whether the amount of cost of compensation and other costs to be incurred in the respective acquisitions by the Government, was agreed to be a loan to the Corporation.

II. If so, is it to be a loan from the date on which the compensation is to be paid or from the date when the lands are to be placed at the disposal of the Corporation. In case one or the other is established, what is its effect on the controversy between the parties.

III. Whether there was a pre-arranged scheme between the State and the Corporation to acquire the land by issuing notifications under sec. 6 declaring that lands were needed for the public purpose specified therein at the expense of public revenue but the cost of acquisition in its entirety was agreed to be borne in substance and in reality by the Corporation and no contribution was to be made from public revenue ? If yes, whether it amounts to colourable exercise Of power, in issuing such a notification. In the present case, both sides rely upon the documents produced to which we have made a reference for substantiating their submission. We therefore now will scrutinise these documents for their impact on the respective cases of the parties and to resolve the points posed before us.

30. On 19th of February 1964 the Chief Executive Officer of the Corporation wrote to the Secretary to the Government, Health and Industries Department. This letter shows : (i) that the Gujarat Industrial Development Corporation had already come into existence and was functioning. We are informed that the Corporation actually came into existence on the 9th of August 1962; (ii) that proceedings were started in respect of lands at Vallabh Vidyanagar and other places for acquisition of lands under the Development Act and sec. 5A inquiry stage was reached and that the procedure provided by sec. 30 of the Development Act was contemplated to be adopted; (iii) that the Legal Department of the Government of Gujarat was in agreement with the view of the Government of India that the procedure laid down in Chapter VI of the Development Act as well as the rules framed under sec. 55 of the Act will apply even though the acquisition may be for the Corporation under the Development Act; (iv) that this would raise numerous difficulties and cause delay in the process of acquisition. It is also pointed out that if the Corporation were to fail to convince the Court at any stage about any of the five matters mentioned in the letter, the acquisition will fail and they will have to start all over again; (v) that

the Corporation suggested that to avoid all these difficulties and delay, it will always be safe for the Corporation to get the lands acquired by the Government for which payment would be made from Government funds but all the same ultimately the lands be transferred to the Corporation for development. It was also suggested that same policy be followed for acquiring lands on behalf of the Corporation in other areas also. In short the Corporation having felt that acquisition of lands for the Corporation under the Special provisions of the Development Act read with sec. 6 of the Act would land them into many difficulties and cause delay, therefore it initiated the suggestion that instead, lands should be acquired for the Corporation but Government should first acquire them at Government costs and ultimately transfer them to the Corporation. This letter of course is silent as to how the Corporation would bear the financial burden. This is the beginning of what ultimately becomes a policy or scheme in respect of lands to be acquired for the purpose of development of industries with which the Corporation was concerned.

31. The next document is another letter dated 6th of May 1964 from the Chief Executive Officer of the Corporation to the officer on Special Duty. The subject referred to is significant. It is : Acquisition of lands for the Gujarat Industrial Development Corporation. Analysis of this letter would show that (i) after the first letter was written, the Chief Executive Officer and Government Officials had met several times; (ii) that the Health and Industries Department of the Government had consulted the Legal Department and the Legal Department had advised the Government and thereafter again the officer of the Corporation was invited to meet and discuss O. R. 66 the matter with the Special Officer and the Secretary himself and that he had done so; (iii) that it was advised by the Legal Department that it will be feasible to carry out the suggestion made by the Corporation in its first letter by resorting to sec. 32 of the Development Act and place the land at the disposal of the Corporation; (iv) that the Chairman of the Corporation was also consulted by the Government and he had agreed to this policy of acquiring all lands by the Government, at public expense; (v) the last para however gives a clue for the first time as to who in the ultimate analysis under the scheme will in reality bear the burden of cost of acquisition. In this para the writer expresses apprehension that for some time, for the payment of compensation for the acquisition there may be some difficulty. It is suggested that much larger funds will be necessary by the Corporation to meet the entire cost. They were informed that rupees thirteen lacs only were allocated to the Corporation for the year 1964-65 and that too under the budget head of "Q-Loans and Advances". It is then suggested that as the acquisition as arranged will now be by the Government at public expense, the further advances be made under a different heading of "capital outlay". The officer further said that there was time enough to think about it all as the declaration of award for paying compensation will take some time. In the mean time orders may be made to take further proceeding to acquire the lands.

32. Commenting on these two letters, the learned Advocate General submitted that it may be true that it was the Corporation who pointed out to the Government difficulties of acquisition and the delay likely to be caused if the procedure were followed under sec. 30 of the Development Act and that the Legal Department of the State of Gujarat agreed that such difficulties may arise and

delay may be caused. He submitted that he himself however was of the opinion that there should have been no such difficulties as was apprehended and suggested in that letter and even if it was taken to be acquisition under sec. 30 as was tried to be made out by some of the petitioners, all the requirements of sec. 30 are fully complied with. Therefore also the acquisition cannot be challenged. This line of argument however is not open to the Government because it is act the case of the Government that the acquisition is under sec. 6 of the Act read with sec. 30 of the Development Act. They have definitely stated that the acquisition is under sec. 6 of the Act read with sec. 32 of the Development Act The question now therefore is, whether the proviso to sec. 6(1) has been complied with. The learned Advocate General then submitted that these two letters, only show that when the Corporation made the suggestion, the Government examined the question and decided to acquire the lands for the Government and at the cost of public revenues and then to place the lands at the disposal of the Corporation on certain conditions. This, argued the learned Advocate General, was perfectly legal. Even the last para of the second letter, according to him created no difficulty for the Government because it only refers to the fact of more money that will be required to meet the expenses of the cost of acquisition and that in the budget head a change will be necessary as acquisition was to be made by the Government and at public expense.

33. May be that if these two letters were standing by themselves, it would not have been possible to disagree with the submissions made by the learned Advocate General toto. But the story is not complete and these letters will have to be evaluated in context of what happens there-after. All the same we feel that these two letters are not such innocent documents as are tried to be made out by the learned Advocate General. The important facts that emnates from these letters are that it vas the Corporation that initiated the idea about the new scheme with which Government agreed and further in the second lever there is a suggestion that the Corporation will temporarily experience financial difficulty to meet the cost of acquisition. There is a further suggestion that the Corporation will require more money for the purpose but that in view of the new scheme of acquisition the allocation may have to be made by the Government under a different budget head of "capital outlay" and not "loans and advances" as was done before. Reading between the lines, it is hard to get away from the feeling that even at this stage the arrangement was that the cost was in reality to be borne by the Corporation though the mode of acquisition was to be by resorting to sec. 6(1) of the Act read with sec. 32 of the Development Act and therefore the Corporation told the Government that they will for some time feel the difficulty In meeting the financial liability and further that more amount will have to be given to the Corporation by the Government. All the Fame it is true that we must go to the other documents that follow in their wake to correctly and finally assess the full significance of these two letters.

34. The next document indicates the action taken by the Government as a result of the two letters addressed to them by the Corporation, after several discussions and consultations between the responsible high Officers on both the sides. It is dated 30th June 1964. It is issued by the Government in its Health and Industries Department. The heading is "Read :- Letters No

GIDC/24 dated 19th February, 1964 and No. GIDC/60 dated 6th May, 1964 from the Chief Executive Officer, Gujarat Industrial Development Corporation, Ahmedabad." The body of this resolution then shows that the proposal to adopt the new scheme for acquisition of lands for the Corporation as suggested by the Corporation was adopted by the Government viz to acquire the lands at public expense for public purpose. It is also clear that Government approved of the tentative programme of acquisition of land as was put forward by the Corporation. That programme is attached to this resolution in the form of the time- schedule showing the estimated lands to be acquired at various industrial areas and estimated amount required for paying compensation from year to year. The programme is shown spread over the period 1964-65 to 1970-71. The resolution also requires that the Corporation will have to submit every year a definite proposal for acquisition of land in consultation with Government. So the scheme was initiated by the Corporation for lands to be acquired which met the approval of the Government. This resolution is silent about the fact as to whether there will be any financial implication for the Corporation in respect of these acquisitions. But we have not to wait long to find it out as the next document, in our view, gives a clear view of the matter.

35. That document is the second resolution of the Government dated the 19th August 1964. In the earlier part of this judgement, we have reproduced the first two conditions of this resolution having regard to the importance of the contents thereof. The third condition requires the Corporation to recover and credit to Government non-agricultural assessment from the date the land is put to non-agricultural use. The fourth condition provides that while leasing out the lands to industries, the Corporation should stipulate that any unearned increment in the event of transfer of lease rights of the land by the industry shall accrue to the Corporation. If the Corporation earns any such unearned increment or in any other manner, Government will be entitled to share 50 percent of such unearned increment. The fifth condition is that industries to which plots are allotted will hold them subject to conditions laid down in Government Resolution dated 17th October 1947 as modified by Resolution dated 7th August 1965. We may mention that these resolutions are also produced by the Government. The sixth condition provides that after the land is developed, the Corporation will deal with it in accordance with the regulations made and direction given by the State Government. Lastly it is provided by the seventh condition that the land placed at the disposal of the Corporation will have to be replaced at the disposal of the Government if the Government required the land, on such term as may be provided. To examine the impact of this resolution on the controversy, we may as well see the third resolution which also on the record so as to have a complete idea about the true nature of the transaction.

36. Resolution dated 29th February 1968 refers to acquisition of lands of village Karamsad. This resolution was produced by the Government with the affidavit in rejoinder filed on behalf of the State in Special Civil Application No. 903 of 1964. A similar resolution dated 14th October 1965 in relation to lands at Odhav was also produced by the Government in Special Civil Application No. 1023 of 1967. As already indicated, these two resolutions were made for the purpose of sanctioning the amount for payment of compensation to the interested persons whose lands were

to be acquired. The first resolution sanctions Rs. 2,87,600/- and the second Rs. 5,67,650/- and directs that the said amount be placed at the disposal of the Special Land Acquisition Officer from the Government treasury. It is further directed that the expenditure should be debited to "Capital outlay on Industrial and Economic Development (V)(I) other Miscellaneous Undertakings-Schemes in Five Year Plan-Scheme Industrial Areas and Satellite Townships". The fourth para of that Resolution dated 29th of February 1968 requires to be carefully noted, and It may as well be reproduced.

"4. As the above lands have been placed at the disposal of the Gujarat Industrial Development Corporation under sec. 32 of the Gujarat Industrial Development Act, 1962 for the purpose of development of Industrial Areas, Government is pleased to direct that the cost of these lands should be treated as long term loan advanced to the Gujarat Industrial Development Corporation on the terms and conditions laid down in Government Resolution, Health and Industries Department No. IND-1664-II. dated the 9th August. 1964."

37. On behalf of the petitioners it is urged that the resolution dated the 19th of August 1964 and particularly the conditions Nos. 1 and 2 thereof show that there was an arrangement or agreement between the Government and the Corporation that the money that the Government will pay for the compensation in the acquisition proceedings plus the other actual cost of every type in respect of acquisition shall be treated as a loan to the Corporation and that the said loan will be recoverable by the Government with 6% interest by half yearly instalments within 15 years. It was urged that these terms though shown as conditions on which the lands will be placed at the disposal of the Corporation, having regard to the fact that it is a part and parcel of the pre-arranged scheme initiated by the Corporation itself for the acquisition of land, can leave no manner of doubt that it was a term agreed to between the parties that whatever expenditure the Government will initially incur for the acquisition of lands as proposed by the Corporation will in reality be borne by the Corporation. It is therefore that before even the moneys were advanced and before the time to pay compensation arrived, this agreement between the Government and the Corporation was put in writing that the moneys so spent will be treated as a loan to the Corporation. It is submitted that the moment the amount advanced becomes a loan to the Corporation, the amount belongs to the funds of the Corporation. It was also argued that the wordings of these two conditions of the said resolution clearly indicate that no sooner the amount will be paid or cost will be incurred or made by the Government for the acquisition, it will be treated as a loan to the Corporation and interest will begin to run: It is further argued that if at all there is any doubt about it, the fourth para of the subsequent resolution of 29th February 1968 makes it entirely clear. It was submitted that the effect of reading these resolutions with the two prior letters of the Corporation is to indicate without any manner of doubt that the Government merely advances a loan to the Corporation and from that amount of loan which must be taken to have formed part of the fund of the Corporation, the cost of the acquisition is to be met. No part of the cost of acquisition in fact is to be met from the public revenues. Therefore it is submitted

that there is clear non-compliance with the requirement of the proviso to sub-sec. (1) of sec. 6.

38. It was further urged that even if it is held that the documents do not go to the extent of proving that the amount advanced is to be treated as a loan on the day the cost is incurred or compensation is to be paid but only prove that it is to be treated as a loan when the land is placed at the disposal of the Corporation, the acquisition is invalid. It is so because the land is to be acquired under a pre-arranged scheme and the payment of the amount is also a part of that scheme where the amount whenever it is paid is to be treated as a loan. Therefore it cannot be said that there is an acquisition first at the cost of public revenues and thereafter the lands are placed at disposal of the Corporation and at that point of time there is a subsequent agreement that it will be treated as a loan so that it can be said that the cost of acquisition is met In reality by the public revenues. In the light of these facts, it must be held that a mere appearance is made that the cost of acquisition is to be met from public revenues but in reality it is the Corporation that bears the whole cost. This is clearly colourable exercise of power.

39. In order to support their submission, reliance is placed by the petitioners on the decision of *Sadrudin Suleman v. J. H Patwardhan*³ It was pointed out that in the said case also a question arose whether the requirements of the proviso to sub-sec. (1) of sec. 6 of the Act were complied with. From the facts established in that case, the learned Judges found that Government had resolved that the expenditure of rupees twenty Lacs for payment of compensation in respect of land acquired for the Maharashtra Industrial Development Corporation shall be recovered from the Maharashtra Industrial Development Corporation It was held that the expenditure then ceased to be an expenditure by the State and could only be understood as an expenditure upon a pre-existing arrangement with the Maharashtra Industrial Development Corporation that it would be repaid. In substance that would constitute a loan whatever gloss may be put upon the transaction and when money are advanced by the State to the Corporation for payment of compensation for lands acquired for the Corporation, the compensation cannot be said to be paid wholly or partly out of public revenues.

40. We find that there is great force in the submissions made on behalf of the petitioners. But let us now examine the arguments advanced by the learned Advocate General to counter these submissions made on behalf of the petitioners.

41. The first attempt of the learned Advocate General is to show that the documents referred to by us do not cull out any pre-arranged scheme between the Government and the Corporation that the amount of cost in reality will be borne by the Corporation. He urged that there was a bona fide change of policy adopted because of the difficulty felt by the Corporation to acquire the lands by having resort to sec. 6 of the Act read with sec. 30 of the Development Act. He pointed out that under the scheme, as is made clear by the above referred resolutions, the land was never going to vest in the Corporation. It is only to be placed at its disposal as authorised by sec. 32 and on the terms laid down in the resolution of the 19th of August 1964. The lands are then only to be dealt with by the Corporation under the directions of the Government. The resolutions also

make it clear that the lands will have to be replaced if and when the Government wants them. Therefore, what is done by the Government and the Corporation is only to agree to do what sec. 32 permits. But in our view the mere fact that the land is to continue to be of the ownership of the Government and it is only to be placed at the disposal of the Corporation

³ A. I. R. L 65 Bom 224

on conditions laid down cannot help the Government to meet the situation. The question that is to be answered is does the Government contribute wholly or partly to the cost of acquisition from public revenue. It is difficult to say that it does in the light of the fact that in its own resolution as pointed out, though it is to spend money from public revenue the amount to be so spent is to be treated as a loan to the Corporation, so in reality it is the money of the Corporation that is paid. Seeing this difficulty, the learned Advocate General made an effort to overcome the difficulty by arguing that sec. 6(1) proviso has to be strictly interpreted and the Court has only to see whether Government at the date of sec. 6 notification decided to acquire for a public purpose and also decided to pay from public revenues and then if the amount, whatever be the arrangement between the Government and the Corporation, is actually paid from public revenues, then the requirement of the proviso is literally complied with. We find it difficult to accept this construction placed by the learned Advocate General on the proviso. What the proviso requires is not that the amount to meet the cost is in the first instance paid by the Government from public revenues but it requires that in fact and in reality the compensation wholly or partly is paid from public revenues. In our view, the requirement of the proviso will not be complied with by the mere physical fact of the amount coming out of the public revenues to meet the cost of acquisition. It can be said to be complied with only if the amount in reality and in law can be said to be the amount belonging to the public revenues at the point of time when such payment is made. In this case, though the money actually comes from the public revenues to meet the cost of acquisition, at that very moment by a pre-existent agreement it is treated as a loan to the Corporation. It will amount to closing ones eyes and mind to reality and substance if the suggestion made by the learned Advocate General were to be accepted. In our judgment, from these documents, a clear picture emerges of a compact scheme of acquisition based on agreement between the Government and the Corporation which inter alia provides that though the Government will give from public revenue the amount to meet the cost of acquisition, the amount will be considered to be a loan or an advance to the Corporation which will be recoverable by the Government with 6% interest by half yearly instalments within fifteen years. So when the Government actually sets apart the amount or makes the payment, the amount has ceased to belong to public revenues as it is treated as a loan to the Corporation and it is the money of the Corporation that is paid to meet the cost of acquisition.

42. The learned Advocate General tried to convince us that the use of the words 'treated as a loan' cannot be read to mean that it is an advance to the Corporation. He argued that the words 'treated' must be given its proper significance. He submitted that the words 'treated as a loan' were used in the sense that Government treated it as a loan only for its accounts purposes and there is no agreement or arrangement between the Corporation and the Government that as a matter of fact it

will be a loan or advance. We are unable to accept this submission of the learned Advocate General. The word "treated" has to be read in the context in which this word is used in the two resolutions and the manner in which the transaction is done. The words "treated as a loan" have to be read in context of the fact that there is no direct transfer of money by Government from the public revenues to the Corporation. The arrangement is that the amount is to be put at the disposal of the Special Land Acquisition Officer, by the Government to meet the cost of payment of compensation and other expenses. But under that arrangement it is to be an advance to the Corporation. Therefore when the Government puts this arrangement on record by way of a resolution, it says that though it will pay the money from the public revenues, it shall be treated as a loan to the Corporation. Then when it actually sanctions and puts the amount at the disposal of the Special Land Acquisition Officer, it conveys to the Government Officers concerned that though the Government is paying the amount from the public revenues the amount is an advance to the Corporation and it should be "treated as a loan" to the Corporation. Then again there is the condition whereby the Government is entitled to recover and the Corporation bound to pay back the entire amount with interest by instalments. There is no doubt in our mind that having regard to the documents on record and particularly the condition in the second resolution made by the Government read with para 4 of the last resolution that the amount is advanced to the Corporation, by the Government for payment of compensation.

43. The learned Advocate General then made an effort to urge that the use of the words "treated as a loan" and the laying down of the two conditions in the resolution of 19th August 1964, should not be construed as constituting a loan or advance. The Court should hold that the Government only decided thereby to recoup the cost that it may incur for the acquisition. He argued that this is only a manner of expression used by the Government but in fact it only means that Government wants to recoup the cost. Mr. A. H. Mehta as regards this stand of the learned Advocate General argued that on a proper construction of sec. 6, if the Government acquires land for a public purpose it must contribute wholly or in part from public revenues. Therefore, if the Government were thereafter to deal with the property in such a way that it recoups, in other words recovers every Paise that is paid from the public revenues then the very mandatory provision of the proviso to sec. 6(1) that the public revenues shall contribute something at least, can always be circumvented. The sanctity intended to be attached to the act of the Government getting itself associated with the act of acquisition for a public purpose by contributing from the public revenues would be frustrated if the Government were free to first make a show of contributing and then recover it all, under the nomenclature of recouping the cost. Therefore, according to Mr. Mehta, there is no question of the Government in any case being allowed to say that it can so deal with the property acquired for the public purpose that it can recoup the whole amount incurred as cost of acquisition. In the view that we are taking in these matters in this judgment on the other points raised, we do not feel ourselves called upon to decide the correctness or otherwise of the construction of sec. 6 of the Act, as canvassed for by Mr. Mehta.

44. But assuming that it is possible to say in conceivable cases that if after the acquisition is

complete for a public purpose and the cost is paid wholly or partly from public revenues, the Government may in a proper case transfer the land or enter into some transaction with a third party on condition that Government will. recoup the cost incurred. The point is whether under the facts of the present case, any question of recoupment can arise. In our view it cannot for reasons which we shall presently give.

45. The learned Advocate General sought to seek support for his said submission as regards the arrangement of recoupment of cost from two decisions of the Madras High Court. In *Secretary of State v. Murugesan*⁴ it was held that where 20 per cent of the cost of acquisition of certain lands for building sites is to be levied in the first instance from the private parties and 80 per cent to be first paid by the Government, to be subsequently

⁴ A.I.R. 1970 Mad 248

recouped from the private parties to whom the lands are to be assigned, the provisions of sub-sec. (1) proviso "are substantially complied with, in that, part of the acquisition costs had to come out of the public revenues at the time of the acquisition". In the said case it was urged before the learned Judge that in view of the intention of the Government to recoup 80 per cent of the cost from the grantees of the sites in the manner stated hereabove, it should be deemed that no portion of the cost really comes out of the public revenues. The learned Judge observed that it seemed to him at first sight that all that the proviso required was that some portion of the initial cost of the acquisition should come out of the public revenues. It was silent as to what the effect of any future action by the Government in the matter of recouping the amounts advanced by it would be upon the validity or propriety of the notification. The learned Judge was of opinion that by reason of the stipulation that 80 per cent of the cost now paid by the Government should later on be recovered from the grantees, it cannot be concluded that the entire amount would surely be recouped by the Government. It is also observed that one cannot forget the other contingency of the Government failing to recoup portion of the amount, in which case, it must itself bear the outlay to that extent. Such contingencies as would arise in future are now problematic and in the face of the clear fact that 80 per cent of the cost is now paid out of the public revenues, it need not be speculated as to what would happen in future. On this reasoning the learned Judge came to the conclusion that in spite of the aforesaid stipulation, there was substantial compliance with the condition in the proviso of sec. 6(1) that at least a part of the cost should come out of public revenues at the time of the acquisition. With due deference to the learned Judge we find it difficult to agree with the reasoning on which the conclusion is reached in that case. But assuming that the grounds on which the conclusion was reached are tenable no such grounds can arise in the cases with which we are concerned. In the instant case there is no contingency of Government failing to recoup itself nor is it necessary to speculate whether Government will be able to recover the cost or not. As pointed out, the Government exercises very effective control over the affairs of the Corporations to the extent of dissolving the Corporation in which event the assets of the Corporation vest in the Government. Again unlike the Madras case, where the land is acquired for the Panchamas on which their houses are built and these pieces are allotted to them ~. R. 67 making them full owners thereof, in the present cases as the case of the Government is

the land is the land never to vest in the Corporation and the Corporation though will deal with it, it will be under the direction of the Government and subject to conditions prescribed; again the Corporation is bound to replat the land at the disposal of the Government on demand by the Government. This decision therefore may be at most an authority on the point that if in fact there is a valid acquisition for a public purpose at public expense, then at the later stage, Government may enter into an arrangement with a third party to transfer the land on condition that all the cost shall be recouped by Government. As pointed out hereabove, in our case no question of recouping the cost arises, for under the scheme, on the day the compensation is paid, in reality it is the money of the Corporation that is paid. In *Secretary of State v. Gopala Aiyar*⁵ the same question arose on the same set of facts as in the earlier Madras case. Agreeing with the learned Judge who decided the earlier case, Venkatasubba Rao J. said that he was prepared to hold that the facts of this case bring it within the proviso of sub-sec. (1). He, however, observed that his reason for agreeing with this view was that the validity of the declaration under sec. 6 cannot be made to depend upon some further contingent event. He held that the conditions of the proviso were fulfilled because in

⁵ A I.R. 1930 Mad 798

construing the proviso, what the Court must have regard to is the state of things at the time of the declaration. He further held that the possibility of the Government not recovering the 80 per cent amount of the cost paid, either wholly or in part, is not a factor that counts. We agree, with respect, with the learned Judge. Applying the test to the facts of the present case, the State of things at the time of declaration is, that there existed an arrangement between the Government and the Corporation the effect whereof was that the Government will only advance the money to the Corporation for meeting the total cost of acquisition. Therefore, when the payment is actually made, money for the compensation is paid in reality from the funds of the Corporation. Such a situation did not prevail in any of the cases before the Madras High Court. The chain of events prior to the declaration viz., from February 1964, indicate with definiteness the entire scheme which was in the mind of the Government and the Corporation and the arrangement arrived at that the moment the cost is incurred, it will be treated as a loan. When the officer pays the amount of compensation as if pays on behalf of the Corporation. Assuming that the land is to be placed at the disposal of the Corporation, in faithful compliance of sec. 32 of the Development Act, and the land is never to be vested in the Corporation, yet the fact remains that it is only a part of a single scheme which also included the arrangement that though the Government will sanction and give the amount from public revenues to meet the cost of acquisition, the moment it is paid will be treated as a loan to the Corporation. In the present case there does not exist any such dichotomy as suggested by the learned Advocate General that would entitle the Government to rely upon the theory of recoupment. There are no two stages of a completed valid acquisition and a subsequent arrangement to place the lands at the disposal of third party on condition that the cost of acquisition will be recouped. We may here mention one important fact that though the Corporation is a party in some of the matters before us, and it is under a statutory duty to maintain accounts and to prepare budgets, it has not filed any affidavit nor filed any document or extracts of accounts to negative the conclusion which we have reached

that from the moment the payment was made by Government the amount in fact is to be treated as a loan to the Corporation and it formed part of the funds of the Corporation. It is also important to note that no were in any of the affidavits filed by the State it has been stated that the payment by Government is agreed to be treated as a loan to the Corporation not at the point of time the payment of compensation is made but on some later date when the lands are actually placed at the disposal of the Corporation. Under the circumstances the decisions of the Madras High Court nor the theory of recoupment can be of any help to the Government.

46. The learned Advocate General then urged that Government was the owner of the lands on acquisition and Government had decided to put the lands at the disposal of the Corporation on condition inter alia that it shall pay back all the cost with interest. The land does not vest in the Corporation even on payment of full cost. Under the circumstances, the Corporation may not accept the offer of the Government to put the lands at its disposal on such conditions. Fixing of the conditions is an unilateral act on the part of the Government. There is nothing like a contract between the Government and the Corporation and it is not bound to accept the terms. Therefore, it cannot be said that Government does not acquire at public expense. The argument is again based on fallacy which is apparent. In the first place, as already pointed out, here the documents themselves prove beyond any manner of doubt that it was the Corporation that initiated the scheme. One of the terms impliedly agreed and which becomes explicit at the stage of resolution is that the full cost of acquisition will be recovered from the Corporation as cost incurred will be treated as a loan to the Corporation. The documents reveal that the Corporation and the Government had agreed upon the scheme after many personal meetings of the highest officers on both the sides. There is no question here of any unilateral decision of the Government which the Corporation may or may not accept. Apart from that, we have seen the provisions of the Development Act and the control and power that Government can exercise on the Corporation. As pointed out, under the provisions of that Act, in all matters of policy, the Government is entitled to give directions which the Corporation is bound to follow. The documents, we have dealt with show and it is also the case of the Government that the new policy decision had been taken with regard to the acquisition of lands which were ultimately to be placed at the disposal of the Corporation. Under the circumstances we do not see any basis for the argument of the learned Advocate General that still the Corporation is free to accept or not to accept the lands to be dealt with by it on the conditions laid down by the Government. We are, therefore, not able to agree that it is open to the Corporation to refuse to accept the terms and there is no question of any fixing of those conditions unilaterally by Government.

47. It can be seen that the facts in the said Bombay case *Sudruddin v. T. H. Patwardhan*⁶ so far as the ground we are considering were more or less similar and so where some of the arguments advanced. The ratio of the decision of the point in question was that if the facts on record establish that the amounts are to be loans to the Corporation and that it was on that basis that all the amounts would be advanced to the Corporation as a loan that the entire scheme has been undertaken and the acquisition made, then whatever be the cloak, it cannot be said that the

amount of compensation to be paid for the acquisition is to be paid from public revenues. Consequently the requirements of the proviso of sec. 6(1) are not complied with.

48. This Bombay decision of *Sadrudin v. T. H. Patwardhan* (supra) came in for consideration by the Supreme Court in *Ishvarlal v. State of Gujarat*⁷ with regard to the findings made by the Bombay Court on the interpretation of sec. 17 of the Act and that finding was reversed. The conclusion, however, regarding the non-compliance of the requirement of proviso to sec. 6(1) has remained unchallenged and undisturbed. In our view the facts of the present case are even stronger and the reasoning and the ratio of the Bombay decision are attracted, which fully support the view we have taken. But the learned Advocate General tried to argue that the said decision was arrived at on the special facts of that case and its ratio therefore cannot apply to the present case. He urged that there are three distinct features which we must keep in mind while trying to see whether the ratio of that decision would apply to the present case or not. He submitted that these three features have given shape to that judgment and these features are absent in the case with which we are concerned. Therefore, the ratio will not apply. These three features are:-

(i) Sec. 40 of the Maharashtra Industrial Development Act, which is equivalent to sec. 32 of the Gujarat Development Act was not brought into force in the area where the lands were situated at the time the concerned acquisitions were made;

⁶(A.I.R. 1965 Bom. 224)

⁷ A.I.R. 1968 S.C. 870 (IX G.L.R. 634)

(ii) the policy of Government was only inchoate and not complete as is the case in the matters on hand;

(iii) in the first affidavit of Mr. Patwardhan, the Commissioner concerned, he had admitted that the whole of the cost of acquisition was to be borne by the Corporation.

Let us see whether the absence of the alleged three features in our case would make any difference in the application of the ratio.

49. It is true that the provisions equivalent to our sec. 32 of the Development Act viz. sec. 40 of the Maharashtra Act was not in force in that area at the date of acquisition. But that fact in our view cannot make any difference. We have at some length dealt with the fact that the presence of sec. 32 and the fact that the acquisition purported to be under sec. 6 of the Act read with sec. 32 of the Development Act makes no difference to the conclusion that we have reached. Besides, there is nothing to indicate in the Bombay decision that had sec. 40 been in force, a different conclusion would have been reached by the Bombay High Court. The learned Judges have observed that it was not open to the Government to lean on sec. 40 for any of its submissions. All the same on considerations very similar to those that we have taken into account, the Bombay High Court came to the conclusion that the amount was a loan to the Corporation and therefore

the provisions of the proviso to sec. 6(1) were not complied with.

50. Then the next feature pointed out is founded on an assumption that the decision was based on the fact that the policy of the Government was not final and it was inchoate. This is not so. It is obvious that the learned Judges have touched this point in their judgment only to meet with an alternative argument advanced on behalf of the State. The Court has observed that if that submission were to be taken into account, the policy was inchoate and there was no definite decision to acquire for a public purpose at public expense and therefore also the proviso would not be said to have been complied with.

51. The third feature referred to implies the suggestion that the ratio of the decision was mainly dependent on a concession made by Mr. Patwardhan in his first affidavit and the subsequent changes made in the stand by him and other Government Officers in the subsequent affidavits that were filed by them. No doubt it is true that the fact of the vital and contradictory change made on behalf of the State in the stand taken by the Government in the first affidavit filed by Mr. Patwardhan and the affidavits filed later by other officers and also by Mr. Patwardhan himself, looms large in the discussion made by the learned Judges of the Bombay High Court. But one thing is apparent that they have not decided the point against the State on that basis. As a matter of fact the learned Judges have in para 58 of their judgment Inter alia observed that no doubt, the Commissioner had in the third affidavit which he filed, frankly confessed that he was ill-informed and that is what the Under Secretary to the Government Mr. Nargund also had stated and normally having regard to the fact that a high public officer had thus admitted that he had made a mistaken statement in an affidavit because of partial information, they would not have insisted upon holding him to his statement in the first affidavit provided they were satisfied that the mistake was a genuine mistake. Then they have further observed that in support of the stand taken both on behalf of the Commissioner as well as on behalf of the State, a large number of important documents have been filed by the officers concerned and some by the petitioner and therefore it would be necessary to first look into those documents to ascertain what was the true position and whether upon those documents it did appear that an error has been committed by the Commissioner in making his first affidavit. Thereafter the learned Judges proceeded to examine all the documents before them. It was on the strength of the contents of the documents that the learned Judge held that the amount when paid to the Special Land Acquisition Officer was not paid as an amount of Government but upon an arrangement or agreement with the Corporation that it would be a loan to them and repayable by them. After having reached this conclusion on the basis of the documents, the learned Judges observed: "That is what the Commissioner has said in his first affidavit". Then later on in the judgment again it is affirmed that all the various stands taken were merely afterthoughts and were made to get out of the clear position indicated from pleadings and upon the documents that a loan was granted to the Corporation and that the acquisition though made by the Government, the compensation was paid by the Corporation. They therefore, rejected the various stands taken and held that what the Commissioner had initially stated appeared to be the correct position. Nothing can be more clear from the above discussion that the Court did not come to the conclusion it reached on the strength of the first

affidavit of the Commissioner or because of the various stands taken by the State, but it arrived at the conclusion on the basis of the documents before it. The learned Judges were obliged to discuss the affidavits in details because of the completely contradictory stand taken by the Government on the vital point to satisfy themselves about the true nature of the transaction. After examining the documents and facts on the record they were satisfied that the later affidavits filed on behalf of the State could not be relied upon. The ratio directly applies to the present case and supports the stand of the petitioners and the view that we have taken.

52. In the light of the above discussion, we have no hesitation in coming to the conclusion that the proviso to sec. 6 was not complied with in as much as in fact no contribution wholly or partly was made from public revenues.

53. In the course of the arguments on behalf of the petitioners, it was suggested that there is colourable exercise of power as the acquisition in fact was for the Corporation, it was the money of the Corporation that was paid for compensation and the lands must also be held to have vested in the Corporation and yet the notification was issued declaring that the lands were needed for public purpose at public expense. We do not find any justification on the record as it stands to accept this argument because there are no grounds to hold that the lands vest in the Corporation. On the contrary, as we have pointed out, the documents indicate that the lands continue to vest in Government and will be only placed at the disposal of the Corporation Sec. 3Z also clearly empowers the Government to do so. The conditions to be found in resolution dated 19th August .962 also clearly indicate that the property is not to vest at any time in the Corporation. We, therefore, see no merit in this submission. But all the same we do accept the submission on behalf of the petitioners that the notification is bit on the plea of colourable exercise of power. Though the notification, declared that the land were needed for a public purpose at public expense, in reality and substance the acquisition is at the expense of the Corporation. It is not the form but the substance that decides the true nature of a transaction. Though on the face of it all formalities to make the transaction appear to be an acquisition of land at public expense and thereafter it being placed at the disposal of the Corporation were done, a scrutiny of relevant documents and facts discloses it to be in reality an acquisition at the expense of the Corporation. It lays bare a pre-existing scheme of acquisition made at the instance of the Corporation and an arrangement between the Corporation and the Government, which I is inextricably linked with the scheme, that the money will be provided by the Government for meeting the cost of acquisition but it will be treated as a loan to the Corporation recoverable with interest. Under the circumstances, the issuance of notifications, under sec. 6 of the Act, in implementation of the said scheme, declaring that the lands are required for public purpose at public expense. is colourable exercise of power.

54. The result is that these petitions with which we are dealing in this judgement must succeed. Sec. 6 notifications dated the 26th October 1964 which affect the lands at village Karan'sad in Special Civil Applications Nos. 903 of 1964, 1035 of 1964, 101 of 1965, 989 of 1964, 4 of 1965,

5 of 1965 and 6 of 1965, sec. 6 notification dated 31st October 1964 published on 19th November 1964 which affect the lands at village Odhav of the petitioners in Special Civil Application No. 43 of 1965 and sec. 6 notification dated the 31st October 1964 published on 19th November 1964 which affect the lands at village Odhav of the petitioner is Special Civil Application No. 1023 of 1967. are held to be invalid in so far as they concern the lands of the respective petitioners before us. We order a writ of mandamus to issue quashing the said three notifications to that extent. Rule made absolute to that extent. The respondent State to bear the costs of the respective petitioners in all the petitions.

55. Mr J. R. Nanavaty, Assistant Government Pleader, applied for leave to appeal to the Supreme Court under Article 133(1)(c) of the Constitution of India. Leave as applied for granted.

Petitions allowed/ Leave granted.