BOMBAY HIGH COURT

Sadruddin Suleman Jhaveri

Vs

J.H. Patwardhan

(Kotval and Palekar, JJ.)

31.07.1964

JUDGMENT

Kotval, J.

(1) In this Special Civil Application there are challenged two Notification under the Land Acquisition Act whereby the land of the petitioner has been taken by the State of Maharashtra the third respondent before us. On 24th January 1963 a Notification under Section 4 of the Land Acquisition Act, 1894 was issued under the signature of the Commissioner of Bombay Division, the first respondent before us. Since almost every paragraph of this Notifications argued before us it is worthwhile to reproduce the whole of this Notifications. It runs as follows :-

"No. LAQ-B - 7244-B- Whereas it appears to the Commissioner, Bombay Division, that the lands specified in the Schedule herein (hereinafter referred to as the said lands) are needed for a public purpose viz. for development and utilization of lands as an industrial area.It is hereby notified under the provisions of Section 4 of the Land Acquisition Act, 1894 (I of 1894), that the said lands, are needed for the public purpose specified above.All persons interested in the said lands are hereby warned not to obstruct or interfere with any surveyors or other persons employed upon the said lands for the purpose of the said acquisition. Any contracts for the disposal of the said lands by sale, lease, mortgage, assignment, exchange or otherwise, or any outlay or improvement made therein without the sanction of the Collector, after the date of this notification, will under Section 24 (seventhly) of the said Act, be disregarded by the Officer assessing compensation for such parts of the said lands as may be finally acquired.And whereas the Commissioner, Bombay Division, is of the opinion that the said lands are waste or arable lands and that their acquisition is urgently necessary ; he is further pleased to direct under Sub-section (4) of Section of the said Act that the provisions of Section 5-A of the said Act, shall not apply in respect of the said lands.

Under Clause (c) of Section 3 of the Land Acquisition Act, 1894, the Commissioner, Bombay

Division, is pleased to appoint the Special Land Acquisition Officer, Ulhas Valley Project, Thana, to perform the functions of a Collector under Section 4(1) of the said Act, in respect of the said lands.

SCHEDULE

District Thana, Taluka Thana, Village
Pachpakhadi

Block No.	Survey No.	Hissa No.	Approximate area of the lands required A.	g.	a.
111	xxx	xx	xxx		
	xxx	xx	xxx		
	373	1	7	32	0"

(2) It will be clear from this Notification that a plot of land admeasuring 7 acres and 32 gunthas belonging to the petitioner was sought to be acquired for a public purpose. The declaration in the Notification under Section 6 is "for development and utilization of hands as an industrial area". One of the several points that have been raised in this petition is that this does not constitute a public purpose and, therefore, the Notification is bad. In the Notification under Section 4 the Commissioner has stated that those lands were in his opinion waste or arable lands and their acquisition was urgently necessary. They were therefore taken without recourse to the provisions of Section 5-A of the said Act. This dispensation of the provisions of Section 5-A of the Act was by virtue of Sub-section (4) of Section 17 of the Act. The Notification under Section 4 was followed by a Notification under Section 6 on 28th March 1963. Since the Notification under Section 4 had dispensed with the intermediate procedure provided by Section 5-A, Notification under Section 6 was issued without reference to that section. In the Notification under Section 6 the "public purpose" is specified in the Schedule as "for the development and utilisation of lands as an industrial area".

(3) On 30th April 1963 the Special Land Acquisition Officer, Ulhas Valley Project, served a Notice on the petitioner under Section 4 of the Act. that notice was actually dated 19th April 1963 but was served on the petitioner on 30th April 1963. It was followed by a notice to hand over possession on the 6th May 1963 because of the application of Section 17(4). It though dated 19th April 1963 and calling upon him to attend at the time of taking possession i.e. at 12 noon on 6th May 1963, was actually served on him on 7th May 1963 after possession was taken. On 30th April 1963 a further notice was served upon the petitioner by the Special Land Acquisition Officer, the second respondent, to appear before him on that 15th of May 1963 and to lodge his

claim for compensation. In the meanwhile, pursuant to the notice dated 19th April 1963 informing the petitioner that possession of the land would be taken on May 1963, the petitioner's land was taken possession of on 6th May 1963. It also admitted that on the same day to the fourth respondent the Maharshtra State Industrial Development Corporation. All this was pointed out in a letter dated 14th May 1963 written by the petitioner's attorneys complaining that the acquisition was illegal. The present petition was filed on 12th June 1963.

(4) Now it is the petitioner's case that the Notification under Section 4, 6 and 9 of the Land Acquisition Act are illegal. The grounds, briefly stated are as follows :- That the notification purport to have been signed by and issued under the authority of the first respondent Mr.J. H. Patwardhan, Commissioner of Bombay Division. Mr. Patwardhan purported to sign these Notifications by virtue of the authority conferred on him by an Amendment made in the Land Acquisition Act by a Notification issued by the State Government under Section 3(4) of the Bombay Commissioner of Divisions Act VIII of 1958 it has been argued before us that the power thus delegated to the Commissioner is improperly delegated and that the State Legislature which conferred the power by virtue of the Bombay Commissioners of Divisions Act, upon the State Government to amend by Notification the Land Acquisition Act did not make a valid delegation of its legislative power to the State Government.

(5) Next if has been objected by the petitioner that on the merits the Notifications are had, because they do not comply with the requirements of the Land Acquisition Act, particularly Section 4 and 6 thereof which prescribe as an essential condition to the exercise of the power conferred by them three must be a "public purpose". The petitioner says that the Notifications do not disclose on the face of them any "public purpose" at all, but assuming that a purpose is there it does not amount to a public purpose as interpreted by several authorities. Even having regard to the definition in the Land Acquisition act contained in Section 3(f)(2) as locally amended there does not appear any public purpose upon the Notification, and, so the acquisition is bad. The further challenge was that definition of "public purpose" in Section 3(f)(2) which was amended so far as the State of Maharashtra is concerned by the Land Acquisition)Bombay Amendment) Act, 1953, is no "public purpose" as understood upon the authorities and in any case, the Bombay Amendment is illegal and void under articles 14, 19 and 31 of the Constitution. Ipso facto the Notifications issued pursuant to the Powers given by the new definition would also be illegal.

(6) An alternative objection against the three Notifications has been taken that in fact and in substance the acquisition in the present case is not all an acquisition for a public purpose but that having regard to the circumstances it was an acquisition for a Company viz., the Maharashtra State Industrial Development Corporation. As a result, it has been urged that two consequences

follow, firstly that the Notifications issued under Sections 4 and 6 of the Land Acquisition Act declaring that the land is required for a public purpose are a mere colourable exercise of the power granted under those sections and secondly that the procedure followed for the acquisitions is vitiated. The correct procedure which ought to have been followed is that prescribed in Part VII of the said Act which deals with acquisitions for Companies or Chapter VI of the Maharashtra Industrial Development Act which deals with acquisition for that Corporation.

(7) Next attach was levelled against what has been concisely dubbed the "urgency" clause in the three Notifications whereby the respondent No.1 announced his intention to take the petitioner's lands because they were "waste or arable" lands and their acquisition was "urgently necessary" under the powers vested in him under Sub-section (4) of Section 17 of the Act. By virtue of that sub-section the first respondent dispensed with the provisions of Section 5-A of the Land Acquisition Act and declared that it shall not apply to the said land. It is the petitioner's case that thereby he was deprived of a very valuable right viz. the right take objections and try to persuade the authorities that there was no "public purpose" involved or that the land was not needed or likely to be needed for a contemplated public purpose. The petitioner was says that the urgency clause has, therefore, been wrongly applied on the ground that the petitioner's land were neither "waste" nor "arable" lands and unless they were lands falling within those categories, Section 17(1) would be inapplicable. In reply to this point on behalf of the State it was argued that the question whether they are waste or arable lands under section 17(1) is a matter to be decided in the opinion of the authority concerned and that the Courts are precluded from considering on what basis such an opinion was formed.

(8) It may be noted here that of the above please, which we have stated in brief, the Constitutional objections were not in the petition as originally filed but by an amendment permitted by this Court they were allowed to be incorporated as part of the petition. Similarly the objection that the powers under Section 17(4) read with Section 5-A of the Land Acquisition Act were wrongly exercised, was also incorporated by way of amendment. The petitioner originally relied upon the Notifications which are impugned in this petition and upon the document of the sale in his favour dated 17th September 1960 (Ex. A to the petition) to show his ownership. But later considerable developments took place, which it was said was a test case.

(9) In reply to the original petition the first respondent, the Commissioner of Bombay Division, filed a return on the 4th November 1963 and followed it up by a supplemental return on the 23rd April 1964 in order to meet the amendments in the petition. In this return the first respondent affirmed that in all the Notifications issued by him and impugned in the petition, there was a public purpose involved and that in any event the question whether there was a public purpose or not, was not open to be raised by the petitioner because of the provisions of Section 6(3) which

makes the declaration of the public purpose conclusive evidence that the land sought to be acquired therein. In elaboration of this plea it was urged in the arguments before us that the Court is precluded from inquiring whether in fact there exists a public purpose or not. the respondent traversed the various constitutional grounds and urged that neither the Notifications nor the provisions of section 3(f)(2) as amended were liable to be set aside on the ground of unconstitutionality. The Commissioner also pointed out that he had issued the Notification under Section 4 after he had satisfied himself that the said lands were acquired for the purpose of "developing and utilising the same as an industrial area" and he asserted " - I say that as the said lands were waste or arable lands and as their acquisition was urgently necessary I directed that the provisions of Section 5-A of the Land Acquisition Act would not apply to the said acquisition". He added that he was satisfied that the said lands were needed for the aforesaid public purpose before he issued the declaration under Section 6 and that he had similarly satisfied himself so to the requirements of Section 9(1) when he issued the Notification under that section.

(10) In order to meet the point taken by the petitioner that the acquisition was for a Company viz. the Maharashtra State Industrial Development Corporation, the Commissioner stated in paragraph 10 of his return, "I say that the said land is to be acquired from the funds of the Maharashtra Industrial Development Corporation which is a Government of Maharashtra Undertaking financed by the State Government from Public funds and are intended to be developed from the said funds and to be subsequently dealt with by lease or sale in order to develop the said area as in industrial area". We have reproduced this part of the pleading of the Commissioner here because it was the subject of most of the affidavits subsequently filed by way of amendment or elucidation. The amendment of the first respondent's pleading resulted in the petitioner asking a number of particulars and being furnished with replies to those particulars and in the filing of a number of documents to prove whether the original statement was correct or otherwise. In subsequent affidavits filed by certain officers of the State, the said statement of the Commissioner has been dubbed as incorrect and further averments made which are contrary to the statement quoted above.

(11) The Commissioner further stated that the object of acquiring lands for and developing industrial areas was to procure orderly and planned development of industries in and around Greater Bombay and elsewhere in the State and that such development was necessary not merely to encourage and remove the growth of industry but also in order to avoid future concentration of industry and to ameliorate (sic) the consequence of concentration of industry which has occurred in the past". He alleged that the "concentration led to congestion and consequently to bad conditions of housing, educational and medical facilities, etc., and that by laying out areas in a deliberately planned manner for development as an industrial area and by ensuring a proper development of such areas with space reserved for social services, recreational facilities, etc. all

the disadvantages of haphazard and unplanned development" would be avoided for the future.

(12) In order to meet the plea taken by the petitioner that the lands were not waste or arable lands and, therefore, Section 17(4) read with Section 5-A was not attracted, the Commissioner re-asserted that the lands were waste or arable and further stated in paragraph 13.

"With reference to ground (d) contained in the said paragraph (para. 8) I say that the said lands are agricultural lands described as such in the Record of Rights. I say that the said lands are being assessed to land revenue as agricultural lands. I say that the said lands are waste or arable lands within the meaning of Section 17 of the Land Acquisition Act. I am not aware of and do not admit the allegations that the petitioner's land was fit for immediate use for non-agricultural industrial or building purposes or that the land had been surveyed or that plans had been prepared for construction thereon before the issue of the impugned Notifications".

He also asserted in answer to the point raised by the petitioner that he had satisfied himself after fully considering all the facts that the said lands were urgently required for development as an industrial area On the question of delegation of authority to the Commissioner, he stated that he himself acted under the legal and that he himself by Section 3(4) of the Bombay Commissioners Notification No. 1957 and the Government Notification No.IAQ - 2558 / V, dated 5th September 1958. The second affidavit with the Commissioner filed merely negatived all the pleas as to the unconstitutionality of the notifications as well as Section 3(f)(2) of the Land Acquisition Act as locally amended.

(13) Matters stood at this, when on the 24th June 1964 an affidavit came to be filed by an Under Secretary in the Industries and Labour Department of the Government of Maharashtra, Mr. Hanumant Shrinivas Nargund. That affidavit purports on the face of it to have been filed "in order to correct a mis-statement of fact occurring in the said affidavit filed in Court on 15th November 1963 sworn by the said Mr. Palwardhan" In Paragraph 3 of his affidavit Mr.Nargund stated "In paragraph 10 of the said affidavit, dated 4th October 1963 the date it is admitted is wrongly stated. It should be the affidavit filed on 15th November 1963), it has been stated 'the said land is to be acquired from the fund of the Maharashtra Industrial Development Corporation' I say that the said statement is incorrect and was made under a misapprehension of the true facts. I say that the said lands are being acquired by the State Government for the development of the lands as an industrial area and the compensation payable for the said lands was intended to be paid and is to be paid from public revenue out of the consolidated fund of the State of Maharashtra and the necessary provision therefore has been made in the Annual Budget Estimates of the Industries and Labour Department of the State Government"

Mr. Nargund further alleged that "the sanctioned amount will be paid by the Government to the

Special Land Acquisition Officer concerned for payment of compensation according to his Award to the interested persons". Mr.Nargund also raised a point in paragraph 4 of this affidavit that after the acquisition of the said lands and their vesting in the State Government they would be placed at the disposal of the Maharashtra Industrial Development Corporation was provided in Section 40 of the Maharashtra Industrial Development Act, 1961. Along with this affidavit Mr. Nargund filed copies of extracts from the detailed estimates from the Budget for the year 1964-65. This affidavit filed by the Under Secretary set in motion a process which accounts for the bulk of the pleadings in this petition. It resulted in several affidavits being filed by the petitioner to counter the new stand taken and as we have said, in further affidavits being filed by various officers of the State and the M. I. D. C. and in the filing of a large number of documents by both the parties. It will be noticed that the stand taken in the affidavit of Mr. Nargund is in direct conflict with that taken by Mr. Patwar in direct conflict with that taken by Mr. Patwardhan in this first affidavit. We shall deal with the question raised upon the documents.

(14) Before we proceed, therefore, to discuss the several points raised, it is necessary to say a word about the local amendments that have been effected in the Land Acquisition Act. They provisions of the Land Acquisition Act have been several times amended by local legislation. We are concerned in this petition with two such amendments. The first is the amendment made by Act XXXV of 1953 in the definition of "public purpose" contained in sub-section (f) of Section 3 of the Land Acquisition Act. The definition as it stands after amendment is as follows.

(f) of Section 3 of the Land Acquisition Act. The definition as it stands after amendment is as follows:

"(f) the expression "public purpose" includes (1) the provision of village sites in districts in which the (Appropriate) Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provisions (and it housing scheme as defined in the Land Acquisition (Bombay Amendment) Act, 1918: and (2) the acquisition of land for purposes of the development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment, or sale, with the object of securing further development". In this definition the word "Appropriate" before the word "Government" was added by the Adaptation of Laws Order, 1950 and the following words in Sub-clause (1) of clasue (f) were added by the Land Acquisition (Bombay Amendment) Act, 1948 (Bombay Amendment) Act, 1948".

"and a housing scheme as defined in the Land Acquisition (Bombay Amendment) Act, 1948".

(15) The other amendment made was to add Sub-clause (2) to clause (f) of Section 3 containing the definition of "public purpose" as follows:

"(2) the acquisition of land for purposes of the development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment, or sale, with the object of securing further development".

It is this definition of "Public purpose" as amended by the Bombay Act this is the subject of attach by the Bombay Act that is the subject of attach on the ground of unconstitutionality and other grounds.

(16) The other amendment made which is material for our purpose was, as we have in passing indicated by the Bombay Commissioners of Divisions Act, 1957, Section 3(4), That sub-section - we shall presently advert to its detailed provisions-gave power to the State Government to "confer and impose on Commissioner the powers and duties under any other enactment for the time being in force and for that purpose may, by a notification in the Official Gazette, add to or specify in the Schedule the necessary adaptations and modifications in the enactment to be amended" and it was provided that upon such notification being issued every such enactment shall accordingly be amended and have effect subject to the adaptations and modifications so made and the Schedule to the Act shall be deemed to be amended by the inclusion therein of the said provision for amending the enactment. It appears that pursuant to this power the State Government issued the notification already referred to in the affidavit of Mr.Patwardhan viz. Government Notification, Revenue Department No. IAQ -2558/V dated the 5th September 1958.

(17) We may also at this stage refer to the Maharashtra Industrial Development Corporation and the law under which it was established.

(18) The Maharashtra Industrial Development Act, 1961 (Act III of 1962) was brought into force on the 1st of March 1962. It applies to the whole of the State of Maharashtra but Sub-section (3) of Section 1 thereof provides that Chapter VI shall take effect in such area, from such date as the State Government may, from time to time, by notification in the Official Gazette, appoint in that behalf. Accordingly, the State Government has from time to time actually applied Chapter VI to several areas under its jurisdiction, but it is conceded on both sides that Chapter VI has not been brought into force so far as the area in which the lands in dispute are situated. Therefore, for the purposes of this petition Chapter VI does not apply at all. The preamble of the Act recites that it is expedient to make special provision for securing the orderly establishment in industrial areas and industrial estates of industries in the State of Maharashtra, and to assist generally in the organisation thereof, and for that purpose to establish an Industrial Development Corporation, and for purposes connected with the matters aforesaid. In Subsection (g) of Section 2 "Industrial Area" has been defined to mean an industrial area so declared by the State Government in the Official Gazette, which us to be developed and where industries are to be accommodated. Section 3 deals with the establishment and incorporation of the Maharashtra Industrial

Development Corporation. Sub-section (2) says that the Corporation shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name, and shall be competent to acquire, hold and dispose of property both moveable and immoveable, and to contract, and do all things necessary for the purposes of the Act. Section 4 provides for the constitution of the Corporation. A perusal of the several categories of its members will indicate that excepting three members to be nominated by Government on the ground of certain special experience or ability they are all officers under the State Government or connected with one or more Boards established by the State Government. The Chairman of the Corporation and if it thinks fit a Vice-Chairman. The Chief Executive Officer of the Corporation is appointed under Section 12 (2). Sub-section (1) of Section 13 provides that the Corporation shall take over and employ such of the existing staff serving for the purposes of the Board of Industrial Development constituted by Government Resolution in the Industries and Labour Department No. IDL - 2360/140755-IND) 1, dated 1st October 1960, as the State Government may direct, and every person so taken over and employed shall be subject to the provisions of this Act and the rules and regulations made thereunder. Then follow the provisions for the terms of employment of these persons. Sub-section (3) of Section 13 Provides that "all obligations incurred, all contracts entered into and all matters and things engaged to be done, before the first constitution of the Corporation, by, with or for the State Government or the Board of Industrial Development of industrial estates or industrial areas entrusted to the Corporation, shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Corporation" and the Sub-section further provides for suits and other legal proceedings which may be continued or instituted only against the Corporation. Sub-section (4) of Section 13 is somewhat important, because of the stand taken that the expenditure for the acquisition in the case was really an expenditure of the Corporation. Sub-section (4) says:

"All expenditure which the Board of Industrial Development may have incurred before the date of the coming into force of this Act in connection with any of the purposes of this Act shall deemed to be a loan advanced to the Corporation under Section 21 on that date, and all assets acquired by such expenditure shall vest in the Corporation".

It is also not in dispute that the erstwhile Board of Industrial Development which was a Board set up by Government itself was replaced by the Corporation on 1st August 1962 by a Notification No. IDC - 1062 - IND - 1 dated 1st August 1962 in the Official Gazette. Section 14 and 15 indicate the functions of the Corporation and its powers, Section 14 mentions the functions as follows:-

"14. The functions of the Corporation shall be (I) generally to promote and assist in the rapid and orderly establishment growth and development of industries in the State Maharashtra, and

(ii) in particular, and without prejudicial to the generality of clause (I), to:-

(a) establish and manage industrial estates at places selected by the State Government:

(b) develop industrial areas selected by the State Government for the purpose and make them available for undertaking to establish themselves:

(c) assist financially by loans industries to move their factories into such estates or areas;

(d) undertake schemes or works, either jointly with other corporate bodies or institutions, or with Government or local authorities, or on an agency basis, in furtherance of the purposes for which the Corporation is established and all matters connected therewith".

Section 15 delineates its powers principally the power to acquire and hold properly and to dispose it of, to enter into agreement and take property on lease, to erect buildings and execute such other works as may be necessary for the purpose of carrying out its duties and functions. Clause (j) of Section 15 gives power to the Corporation "to enter into and perform all such contracts as it may consider necessary or expedient for carrying out any of its functions". Section 18 lays done that the State Government may issue to the Corporation such general or special directions as of policy as it may think necessary or expedient for the purpose of carrying out the purposes of this Act, and the Corporation shall be bound to follow and act upon such directions.

(19) Chapter IV deals with finance, accounts and audit and in this connection one point which was made in the arguments may be noted here, that the Corporation has to maintain its accounts not like any other company but in accordance with the public account rules, and they are to be audited by an auditor appointed by the State Government (Section 27 (2) in consultation with the Comptroller and Auditor General of India. these accounts moreover care to be laid before the House of the State Legislature annually (Section 27 (4). By virtue of Section 21 all moneys received by the Corporation from the State Government by way or grants, subventions, loans, advances or otherwise become part of the fund of the Corporation among other things. Chapter VI, which we have already said was not brought into force so far as the area which is the subject-matter of this petition is concerned, provides for acquisition and disposal of land. Having regard to this Chapter it is conceded that there is a special provision for acquisition of lands for this Corporation provided the Chapter is made applicable to the area in question.

(20) In the affidavit made on behalf of the Commissioner a reference is to be found to Section 40 of the Act which gives power to the State Government upon such conditions as may be agreed upon between it and the Corporation to place at the disposal of the Corporation any lands vested in the State Government "for the furtherance of the objects of this Act" and that after such land has been developed by, or under the control and supervision of the Corporation, it shall be dealt

with by the Corporation in accordance with the regulations made and directions given by the State Government. The affidavit averred that the petitioners land would be dealt with under Section 40, but obviously in view of the fact that Chapter VI has not be brought into force in the area in which this land is situated, that reference is irrelevant. The miscellaneous and supplemental provisions contained in Chapter supplemental provisions contained in Chapter VII amply indicate that the State Government has a very rigid control over the Corporation and it if so decides can even dissolve the Corporation itself (vide Section 58) subject to its being satisfied that its purposes have been substantially achieved. Despite this provision in the Corporation Act there has been no dispute raised here that the Maharashtra Industrial Corporation is a "company". It was conceded that it would be a company having regard to the definition in Section 3(e) of the Land Acquisition Act as locally amended. The powers and functions of the Maharashtra Industrial Development Corporation have a material bearing on the question whether the acquisition in the instant case was for a public purpose or for a company as stated in Section 6 of the Land Acquisition Act.

(21) The questions, therefore, which arise for determination in this Special Civil Application for broadly speaking as follows:-

(1) Whether the delegation of the State Government's power to acquire Land particularly under Section 4, 6, 9 and 17, to the Commissioner first respondent by the local amendments effected by the Commissioners of Divisions Act, was in excess of the powers of the State Legislature and whether that delegation, which gives the State Government the power to bring into force any amendment of any Act by a notification is a valid delegation of authority ; If not, what would be the consequence upon the Notifications issued in this case under Section 4, 6 and 9 by the first respondent.

(2) Whether Section 4 and 6 or any parts of those section read with the amendment made in Section 3(f)(2) of the Land Acquisition Act of the definition of "public purpose" by the local amendment, infringe Art. 31, 14 or 19 of the Constitution and whether therefore the notification under Section 4 and 6 of the Land Acquisition Act are bad.

(3) Whether the acquisition in the instant case is not for a "public purpose: in the context of Section 6(1) and more particularly it proviso.

(4) Whether the declaration in the notification under Section 6 of the existence of a public purpose is in the circumstances conclusive under section 6(3) of the Land Acquisition Act.

(5) Whether the acquisition is for a company within the meaning of Part VII of the Land Acquisition Act and if so the omission to follow the procedure laid down in that part would

vitiate the acquisition proceedings.

(6) Whether the petitioner's lands were waste or arable lands and could be taken possession of without observance of the provisions of Section 5-A. If they cannot be so taken what is the effect on the notification under Section 4.

(7) Whether the opinion of the authority under Section 17 would be merely a subjective opinion which the Court cannot scrutinise or whether it should be objectively proved that the requirements of Section 17(1) have been fulfilled.

(22) We may first of all dispose of the objections to the notification that the Commissioner could not promulgate them as he had no valid power. We have already indicated that the notifications under Section 4, 6 and 9 were all signed by Mr. J.H. Patwardha, the Commissioner of Bombay Division who is the first respondent. The first of these two notifications also contains the necessary declaration under Sub-section (4) of Section 17 of the Act, dispensing with the provisions of Section 5-A. In the Land Acquisition Act as it originally stood the power under each of the Section 4, 6, 9 and 17 was only entrusted to the Local Government. After the Constitution by the amendment made by the Adaptation of Laws Order, 1959 instead of the word "local" the word "appropriate" was substituted. It was only the appropriate Government which could exercise all the relevant powers under the Act. A definition was added of the words 'appropriate Government" in section 3(ee) as follows:-

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

Thus, matters stood until by the local amendment the words "or the Commissioner" were added in Section 3(a), 4, 5, 6, 7, and 17 after the words "appropriate Government". This amendment was made under somewhat peculiar circumstances which give rise to the argument that there has been an excess of delegation. The amendment to the Land Acquisition Act was not directly made by any Legislature, What was amended was a local Act. Act VIII of 1958 viz. the Bombay Commissioner of Divisions Act, 1957. This Act was already in force since 1958 it was brought into force in order to provide for the offices of the Commissioners of Divisions in the State of Bombay and prescribing their powers and duties and to make ancillary provisions consequent upon a policy decision to resuscitate the office of Divisional Commissioner which had been abolished soon after Independence. In this Act provision was made by the Bombay Legislature for the amendment of several Acts. Section 3, Sub-sections (1) and (4) provide as follows:-

"3(1) For the purpose of constituting offices of Commissioners of Divisions and conferring

powers and imposing duties on Commissioners and for certain other purpose, the enactments specified in column 1 of the Schedule to this Act shall be amended in the manner and to the extent specified in column 2 thereof".and Sub-section (4) thereof is as follows:-

"The State Government may confer and impose on the Commissioner powers and duties under any other enactment for the time being in force and for that purpose may, by a notification in the official gazette, add to or specify in the Schedule the necessary adaptations and modifications in that enactment by way of amendment and thereupon.

(a) every such enactment shall accordingly be amended and have effect subject to the adaptations and modifications so made, and

(b) the schedule to this Act shall be deemed to the amended by the inclusion therein of the said provision for amending the enactment". It may be noticed at the outset that the Land Acquisition Act was not one of the Acts mentioned in the Schedule and the amendment of that Act could therefore be made only under Sub-section (4) Section 3 of the Commissioner of Divisions Act which says that "the State Government may confer and impose on the Commissioner powers and duties under any other enactment for the time being in force...

(23) Purporting to act under these powers the State Government issued a notification on the 5th September 1958, notification No. G.N. R.D. LAQ - 2558/V dated 5th September 1958 inserting the words "or the Commissioner" in the said section of the Land Acquisition Act in the then State of Bombay excluding the transferred territories under the Reorganisation of States Act. By virtue of Sub-section (4) of Section 3 the Schedule to the Commissioners of Divisions Act accordingly stood amended and that in its turn incorporated those amendments in the Land Acquisition Act.

(24) Now it has been urged on behalf of the petitioner that this was a very devious method of amending the Land Acquisition Act. It is not disputed that the State Legislature could with the requisite assent of the President have directly legislated to amend the Land Acquisition Act to give the necessary powers to the Commissioners, It is also not in dispute that the Bombay Commissioners of Divisions Act has received the assent of the President and that would mean in the context of Section 3(4) that the President has assented to those powers being conferred upon and being entrusted to Commissioners in such enactments as are with in the competence of the State Legislature to enact What is argued, however, is that the State Legislature could not by enacting Section 3(4) delegate in this manner its legislative function to the State Government and give the State Government an omnibus power to amend any other enactment for the time being in force by a simple notification in the Official Gazette. That, it was argued, virtually amounts to entrusting to the Executive the whole function of the Legislature in the matter, and to that extent therefore, the delegation was bad. It was also urged that it was an excessive delegation for the

reason that the State Government had been armed with the power to amend any and every Act and virtually to become a Legislature in itself.

(25) On this question reference was made to In re Art. 143, Constitution of India and Delhi Laws Act (1912), 1951 SCR 747: (AIR 1951 SC 332), and to the principles laid down therein by the highest Court upon which questions of delegated legislative authority must be judged. The subsequent decision of the Supreme Court in which that leading case was substantially summarised was also referred to namely Rajnarain Singh v. Chairman, Patna Administration Committee, . After the analysis of the opinions in the Delhi Laws Act case, 1951 SCR 747 : (AIR 1951 SC 332), made in Rajnarain's case, , the principles are now well settled. In dealing with the Delhi Laws Act case, 1951 SCR 747 :(AIR 1951 SC 332) Mr. Justice Bose made the following propositions in Rajnarayan Singh's case, :

"The Court had before it the following problems. In each case, the Central Legislature had empowered an executive authority under its legislative control to apply at its discretion, laws to an area which was also under the legislative away of the Centre. The variations occur in the type of laws which the executive authority was authorised to select and in the modifications which it was empowered to make in them. The variations were as follows:

(1) Where the executive authority was permitted, at it discretion, to apply without modification (save incidental changes such as name and place), the whole of any Central Act already in existence in any part of India under the Legislative sway of the Centre to the new area:

This was upheld by a majority of six to one.

(2) Where the executive authority was allowed to select and apply a Provincial Act in similar circumstances:

This was also upheld, but this time by a majority of five to two.

(3) Where the executive authority was permitted to select future Central laws and apply them in a similar way:

This was upheld by give to two.

(4) Where the authorisation was to select future Provincial laws and apply them as above:

This was also upheld by five to two.

(5) Where the authorisation was to repeal laws already in force in the area and either substitute nothing in the area and either substitute nothing in their places or substitute other laws, Central or

Provincial, with or without modification:

This was held to be ultra vires by a majority of four to three.

(6) Where the authorisation was to apply existing laws, either Central or Provincial, with alterations and modifications : and (7) Where the authorisation was to app future laws under the same conditions :

the views of the various members of the Bench were not as clear cut here as in the first five cases, so it will be necessary to analyse what each Judge said".

The authorisation under Section 3 (4) of the substance an authorisation to amend any other enactment with a view of confer powers and impose duties on Commissioners under those enactments. It would in our opinion properly fall within the sixth category in the passage quoted above. "Where the authorisation was to apply existing laws, either Central or Provincial, with alterations and modifications".

(26) As to that category at p. 301 (of SCR) : (at p. 574 of AIR), of the Report Mr. Justice Bose summed up the result of the Delhi Laws Act Case, 1951 SCR 747 : (AIR 1951 SC 332) as follows:-

"In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above: it cannot include a change of policy".

In Rajnarain Singh's case, , there were impugned two notifications issued under Sections 3(1) (f) and 5 of the Patna Administration Act of 1915 (Bihar and Orissa Act 1 of 1915) as amended in 1928 whereby the Local Government was empowered in effect:

(1) con cancel or modify any existing municipal laws in the Patna Administration area:

(2) to extend to this area all or any of the sections of the Bihar and Orissa Municipal Act of 1922 subject to such restrictions and modifications as it considered fit:

(3) to add to the Patna Administration are other areas not already under Municipal control.

What the State Government did was to add by a notification a new area to the Patna Administration area and bring the new area under municipal control. Besides it picked Section 104 out of the Bihar and Orissa Municipal Act of 1922, modified it and extended it in its

modified form of the Patna Administration and the new areas. That Section was with regard to assessment of taxes and the petitioner in the case who was a resident of the new area contended that such a delegation was a delegation of an essential function of the Legislature and, therefore, the provisions of the Act which authorised such a delegation were void. It was held that the action of the Governor in subjecting a resident of the new area to municipal taxation without observing the formalities imposed by Section 4, 5 and 6 of the Bihar and Orissa Municipal Act, 1922 cut across one of its essential feature touching a matter of policy and was bad to that extent, but so far as Section 3 (1) (f) of the Act which authorised the delegation of powers to the Government is concerned, it was a valid delegation. Dealing with that point the Supreme Court ruled in Rajnarain's Case :

"Now the only difference between that case)the Delhi Laws Act case, 1951 SCR 747 : (AIR 1951 SC 332) and this is that whereas in the former case the whole of an enactment, or a part of it could be extended, here, any Section can be picked out ..... It follows that when a Section of an Act is selected for application, whether it is modified or not, it must be done so as not to effect any change of policy, or any essential change in the Act regarded as whole. Subject to the Limitation we hold ..... that Section 3(1)(f) is intra vires that is to say, we hold that any Section or Sections of the Bihar and Orissa Municipal Act of 1922 can be picked out and applied to "Patna" provided that does not effect any essential change in the Act or alter its policy".

(27) Judged in the light of this principle we are unable to find that any essential change was made or any change of policy effected when after the words "Appropriate Government" the words "or the Commissioner" were added in the several Sections of the Land Acquisition Act. The original policy of the Legislature remained untouched : the power originally conferred on the State Government remained in all its pristine plenitude : only the Commissioner was a subordinate of State Government and could always be controlled by it, the State Government's power was not affected. The Commissioner in his turn was a responsible officer and in normal course would always be consulted by Government when acquiring property in his division. Thus in fact he would always be influencing the decisions in the matter of acquisitions. This de facto state of affairs was legally recongnised by the amendment. It seems to us that the amendment was made only for administrative convenience and not for any change which can be termed essential much less in order to effect a change of policy.

(28) In the case last cited reference, was made in the leading case of Queen v. Burah 5 Ind App 178 (PC) . On the power of the State Legislature to effect an amendment of this kind that case is instructive. In that case an Act passed by the Indian Legislature (ACT XXII of 1869) which was a validly enacted piece of legislation by the then Governor-General in Council. It empowered an

Executive authority viz. Lieutenant -Governor of Bengal to apply "any law or any portion of any law now in force ..... or which may hereafter be enacted" to a certain district of the then Province of Bengal at his discretion. It was urged that the Indian Legislature could not have thus delegated its own power of legislation to the Lieutenant-Governor of Bengal and that in so far as it empowered the Lieutenant-Governor to determine whether the said laws or any part of them shall be applied in a certain district, the delegation of the legislative authority of the Governor-General in Council to the Lieutenant -Governor of Bengal was in excess of the Council. The High Court held that the 9th Section of the Act of 1869 which purported to empower the Lieutenant-Governor to extend the Act to the Khasi and Jaintia districts was in excess of the Legislative powers of the Governor-General in Council Repelling this view, the judicial Committee of the Privy Council observed at p. 193:

"But their Lordships are of opinion that the doctrine of the majority of the Court is erroneous, and that it rests upon a mistaken view of the powers of the Indian Legislature, and indeed of the nature and principles of legislation. The Indian Legislature has empowers expressly limited by the Act of the Imperial Parliament which created it, and it can, of court, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent for delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question : and the only way in which they can properly do so, it by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, or course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of justice to inquire further, or to enlarge constructively those conditions and restrictions".

Here again the Judicial Committee stressed the point that where a delegation takes place what one has to see is whether looking to the terms of the Act granting legislative powers both in the extend of what it gives as well as what it restricts, any essential legislative power has been conferred or surrendered.

(29) The judicial Committee also drew another distinction it distinguished between essential legislative function and the conditions attached to a legislation. They pointed out that so .long as the essential function is not delegated to the Executive a legislative authority can permit the Executive to fulfill any of the conditions attached to a legislation. The distinction was thus

indicated by their Lordships:-

"Their Lordships agree that the Governor General in Council could not, by any form of enactment, create in India, and arm with general legislative authority, a new legislative power, not created or authorized by the Council's Act. Nothing of that kind has, in their Lordships' opinion, been done or attempted in the present case. What has been done is this. The Governor-General in Council has determined, in the due and ordinary course of legislation, to remove a particular district from the jurisdiction of the ordinary Courts and offices, and to place it under new Courts and offices, to be appointed by and responsible to the Lieutenant Governor of Bengal : leaving it to the Lieutenant-Governor to say at what time that change shall take place : and also enabling him, not to make what laws he pleases for that or any other district, but to apply by public notification to that district any law, or part of a law, which either already was, of from time to time might be, in force, by proper legislative authority. "in the other territories subject to his Government". The Legislature determined that, so far, a certain change should take place : but that it was expedient to leave the time and the manner, of carrying it into effect to the discretion of the Lieutenant-Governor; and also, that the laws which were or might be in force in the other territories subject to the same Government were such as it might be fit and proper to apply to this district also; but that, as it was not certain that all those laws, and every part of them, could with equal convenience be so applied, it was expedient, on that point also, to entrust a discretion to the Lieutenant-Governor .....

Their Lordships think that it is a fallacy to speak of the powers thus conferred upon the Lieutenant-Governor (Large as they undoubtedly are) as if, when they were exercised, the efficacy of the acts done under them would be due to any other legislative authority then that of the Governor-General in Council. Their whole operation is directly and immediately, under and by virtue of this Act (XXII of 1869) itself. The proper Legislature has exercised its judgment as to place, person, laws, powers; and the result of that judgment has been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute. Where plenary powers of legislation exist as to particular subjects, whether in an imperial or in a provincial Legislature, they may in their Lordships' judgment be well exercised, either absolutely or conditionally".

(30) Having regard to these principles and particularly the distinction adverted to between the delegation of essential legislative function and the delegation of powers of give effect to legislation on the fulfillment of certain conditions, we do not think that we can hold that what has been authorised in the instant case is in excess of the powers of the State Legislature. The State Legislature had the power to create offices under it and to say which of its officers shall perform which functions. That legislative determination or judgment is expressed in the very terms of

sub-section (2) of Section 3 which it says that "the Commissioner of division, appoint under the law relating to land revenue as amended by the said Schedule, shall exercise the powers and discharge the duties conferred and imposed on the Commissioner by any law for the time being in force, including the enactments referred to in Sub-section (1) as amended by the said Schedule". By Sub-section (4) the further determination was made that "the State Government may confer and impose on the Commissioner powers and duties under any other enactment for the time being in force". In other words, the legislative determination consisted in this that the Legislature felt that powers under any other enactment could fittingly be conferred upon the Commissioner. That determination included in it a determination as to be authority on whom and the powers which were to be conferred, the purpose for which and the manner in which that authority would be conferred upon the Commissioner and the time when it was to be conferred. Once that legislative judgment was exercised the rest was, in our opinion, merely a matter of the conditions upon which the legislative determination was to take effect. Therefore, there was, in our opinion, no parting with the essential legislative functions in the instant case.

(31) It was next argued that the amplitude of the language used in enacting this piece of legislation is so wide that the State Government can by a conceivable notification make amendments which may affect essential legislative functions. It was urged, for instance, that the State Government could by notification amend the legislation taking away the power from the Courts. Wherever power of this kind is conferred, undoubtedly it is liable to be exceeded by those entrusted with it or for that matter even to be abused. But the argument does not amount to saying, therefore, that the power conferred in bad but that in the implementation of that power the authority is liable to exceed or overstep its delegated functions. That is a different question. It seems to us that it is not seriously argued here with in adding the words "or the Commissioner" in the several sections of the Land Acquisition Act the State Government has exceeded the powers conferred upon it but that the delegate may abuse those powers. The mere capability of its abuse or mis-use cannot after the nature of the power. In the instant case, we have already said that that power was only a power to give effect to the conditions attached to a legislation and did not amount to giving any power to make any essential legislative determination. The delegation was therefore proper.

(32) It was then urged that though, the Commissioner of Divisions Act has undoubtedly received the assent of the President, the subsequent amendments effected by the notifications of the State Government in the Land Acquisition Act as well as the other Acts were not assented to by the President and to that extent the subject of the Legislation which admittedly fell in list III of the Constitution would be bad, because it conflicts with an existing Central Law viz. the Land Acquisition Act. It was urged that the Central Law merely entrusted the functions under Section 4, 6, 9 and 17 to the State Government whereas the local legislation and that too by notifications

of the State Government and the words "or the Commissioner" and to that extent is repugnant to a Central Law. The clear answer to the contention is, in our opinion, to be found in the provisions of Article 254, Sub-article (2) of the Constitution which runs as follows:-

"Where a law made by the Legislature of a State with respect of one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, the, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State".

The Bombay Commissioner of Divisions Act was passed in 1958 and the Land Acquisition Act was passed in 1894. Therefore, for the purposes of Sub-article (2) of Article 254 would be an "existing law" on the date of the Constitution. So far as the Bombay Commissioners of Divisions Act is concerned, it is not disputed that it has received the assent of the President and therefore, having received the assent it would prevail so far as the State of Maharashtra is concerned, even though it may, be repugnant to the provisions of the earlier law made by Parliament viz. the Land Acquisition Act. The Land Acquisition Act was an existing law having regard to the definition of the term in Article 366(10) of the Constitution. We therefore, hold that the amendments effected in the Land Acquisition Act by the Bombay Commissioners of Divisions Act were valid amendments so far at least as this State is concerned We have already held that there was no excess of delegation of legislative authority by Section 3 of the Bombay Commissioners of Divisions Act. Similar instances of enactments held valid, though not identical with the present case are to be found into the State of Bombay v. Meman Santial Alreja , Edward Mills Co. Ltd. v. State of Ajmer , Mohammad Hussain Gulam Mohammed v. State of Bombay , and Patna Improvement Trust v. Lakshmi Devi .

(33) Next we turn to the challenge to the provisions the Land Acquisition Act and particularly to Section 6 thereof upon constitutional grounds. The provisions of Section 6, it has been said, are ultra vires of Article 19(1) (f) and (g), of Article 31 and of Article 14. So far as Articles 19(1) (f) and (g) are concerned, we may at once point out that the challenge to the Act on the ground of infringement of Article 19 has been answered by the highest Court in Somawanti v. State of Punjab . At p. 160 in the same passage which we quote below the Supreme Court also repelled the argument that it infringed Article 31 of the Constitution. In paragraph 21 of the judgment, Mr. Justice. Mudholkar observed with reference to the Land Acquisition Act:

"The Act has been in operation since 1894. The validity of the law was challenged before this Court in Babu Barkya Thakur v. State of Bombay , on the ground that it infringes the provisions of Arts. 31(2) and 19(1)(f) of the Constitution. But this Court held that the law being a pre-Constitution law is protected from the operation of Art. 31(2) by the provisions of Art. 31(5)(a).

It also held, following the decision in the State of Bombay v. Bhanji Munji , and that in Lilavati Bai v. State of Bombay , that the attach under Art. 19(1)(f) of the Constitution is futile".

In Civil Appeal No.322 of 1961, D/- 1-12-1961 (SC), before the Supreme Court this view re-affirmed and a further point taken on the strength of the decision of the Supreme Court inKavalppara Kottarathil Kochuni v. State of Madras , that the decision in Bhanji Munji's case, , must be deemed to have list its authority, was repelled. Mr.Justice Sarkar observed:

"The observation in Kavalappara Kochuni's case, that Bhanji Munji's case, , "no longer hold the field" has, therefore, to be understood as meaning that it no longer governs a case of deprivation of property by means other than requisition and acquisition by the State, Kavalappara Kochuni's case, , was not concerned with a law of requisition or acquisition of property governed by Art. 31(2), as it now stands, and did not decide that question".

(34) We may also say that Article 19(1) (f) or (g) is no longer available to the petitioner having regard to the provisions of Article 358 of the Constitution and the proclamation of emergency recently made by the President in October 1962. The Article in terms says that "While a Proclamation of Emergency is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in the Part be competent to make or to take .....".

We hold that neither Section 4 nor Section 6 of the Land Acquisition Act can be held to infringe Article 19 of the Constitution.

(35) So far as Article 31 is concerned, we have already referred to the decision in Somawanti's case, . In the passage no doubt Mr. Justice Mudholkar made it clear that the Supreme Court in that case were not concerned with a post-Constitution law, but a pre-Constitution law. Replying on these observations a distinction is sought to be drawn between that decision and the present case. It has been urged that so far as the definition of "public purpose" in Section 3(f)(2) of the Land Acquisition Act is concerned, it was added by the local amendment made by ACT XXXV of 1953 and, therefore, would be a post-Constitution law and not a pre-Constitution law as the rest of the Act would be. The conditions necessary to be fulfilled by Article 31 of the Constitution are that no property can be acquired compulsorily except for a public purpose and under authority of law. The law has been enacted and in our opinion is valid. The question then is whether in Sub-section (2) of Section 3(f) of the Land Acquisition Act (as amended), the purposes mentioned can be held to be public purposes within the meaning of Article 31. We shall presently discuss this question as it arises also in connection with Sub-section (1) of Section 6. We may say here, however, that in our opinion, Sub-clause (2) of Section 3(f) added by the local amendment which includes certain purposes within the definition of a public purpose are within

the accepted connotation of that expression.

(36) Turning to the challenge under Article 14 of the Constitution it is the petitioner's case that he himself is the owner of the small factory manufacturing explosives in close proximity to the residential part of Bombay, that therefore the Government of India had ordered him to shift the factory to other premises outside the limits of Greater Bombay and so he had purchased the plot which is the subject of the present acquisition "specifically for re-establishing the said factory". He also averred that detailed plans of the buildings to be constructed were submitted to the Explosives Department of the Government of India and have been finally approved by the Department on the 24th January 1963. The land which he had thus purchased was a "levelled land" and fit for erection of a factory and did not require anything to convert it into land suitable for establishing a factory. It was also land within the industrial area.

(37) The facts stated in this part of the petition were not controverted in the affidavit of the Commissioner dated 15th November 1963 except to deny that the land was levelled or that it was in a fit condition for the erection of a factory or the construction of buildings. It was also denied that it did not require any development to be made for converting it into land suitable for a factory. The fact that the Government of India had asked him to shift this factory and therefore, that he purchased this plot and the Department of Explosives had approved the petitioner's plans for the new fact, the petitioner had filed a number of documents from which these facts are abundantly established. The said correspondence appears at pages 78 to 90 of the paper book. It was on the 24th January 1963 that the Inspector of Explosives of the Central Government at Bombay approved the plans showing the site and details of construction of the proposed gunpowder factory of the petitioner and informed the petitioner accordingly by his letter No.MR/BY, 52/3 dated 24th January 1963. That was curiously enough the very day on which the notification under Section 4, and which is impugned in the present petition, came to be promulgated.

(38) Now taking his stand upon these facts Mr. Bhatt has urged on behalf of the petitioner that the petitioner was himself a person engaged in industry, had himself bought the land in dispute for the manufacture of explosives which is an industry and three was no point in the Government starting acquisition proceedings for the same land for an identical purpose stated in the notification under Section 4 as "for development and utilization of lands as an industrial area". Mr. Bhatt points to the several provisions of the Maharashtra Industrial Development Act, 1961 and the Maharashtra Industrial Development Corporation for which he says that the acquisition in Section 3(f)(2) where the words "and subsequent disposal thereof in whole or in part by lease, assignment, or sale, with the object of securing further development" occur. He says that the whole object, therefore, of the present acquisition is really to take the lands of the petitioner who

is himself engaged in industry and dispose them of to another person for profit though ostensibly for a public purpose. This law this permits the State to take the lands of one citizen held by him upon certain terms and conditions and hand them over to another citizen upon similar terms and conditions and, therefore, it discriminates against the petitioner. He has also urged that the power given by virtue of Section 6 read along with the amendment in Section 3(f)(2) is an arbitrary power conferred upon the State of acquire the lands of the petitioner. There are no safeguards against the exercise of this arbitrary power and, therefore, discrimination is writ large upon the face of the law itself. For these reasons the law infringes Article 14 of the Constitution. In this connection, he also makes an ancillary point that the amendment made by virtue of the power delegated to the State Government under the Commissioners of Divisions Act heightens the discrimination. He urges that whereas the State Government was entrusted with deciding all matters under the Act as it originally stood now even the Commissioner of Division can do so. Therefore the discrimination is the worse because of the powers being entrusted to a lesser official and a subordinate of the State Government, rather than the State Government itself.

(39) Article 14 refers to "equality before the law or the equal protection of the laws within the territory of India". There is no question here undoubtedly of inequality before the law and the argument of the petitioner is based upon the second part of Article 14 "equal protection of the laws". Now it is difficult to see how merely because the law gives power to the State or the Commissioner upon certain conditions to take or acquire the property of the petitioner, the petitioner ceases to receive the same protection of the laws as any other citizen. The power or authority conferred, whether upon the State Government or the Commissioner, is the same, be it the petitioner or any other citizen. What it seems to us, is really complained against in the arguments, is that the power given to the State or the Commissioner is a very wide and arbitrary power and the very amplitude of the discretion makes for discrimination.

(40) We are however unable to accept this argument for a discretion given under a law, however wide it may be cannot necessarily be equated with discrimination, and in so far as there is a possibility of the misuse of a discretion the normal presumption of law is that the authority invested with a discretionary power will act fairly and honestly and not abuse it. If it does however abuse it in a given case, that is an indication of human frailty rather than of the power being discriminatory. The distinction has been drawn in a number of cases, but the most authoritative of these Statements is to be found I n the decision of the Supreme Court in Pannalal Binjraj v. Union of India . In that case power was given by Section 5(7-a) of the Indian Income-tax Act to the Commissioner to transfer the case of any assessee from one officer to another officer. It was urged that the assessee had a right under Section 64 (1) and (2) of the Act to have his tax assessed at the place where he carried on his business or resided and that, therefore, the very wide power given to the Commissioner amounted to an arbitrary power which tended to

discriminate between one assess and another. The Supreme Court put the point before them thus (page 252 of the Report of SCR) at p. 406 of AIR).

"The position, therefore, is that the determination of the question whether a particular Income-tax Officer should assess the case of the assessee depends on (1) the convenience of the assessee as posited in Section 64 (1) and (2) of the Act, and (2) the exigencies of tax collection and it would be open to the Commissioner of Income tax and Central Board of Revenue who are the highest amongst the Income-tax Authorities under the Act to transfer the case of a particular assessee from the "Income-tax Officer of the area within which he resides or carries on business to any other income-tax Officer if the exigencies of tax collection warrant the same".

and the Court answered the point as follows:- (at p. 254 of SCR) : at p. 408 of AIR).

"Such discretion would necessarily have to be vested in the authority concerned and merely because the case of a particular assessee is transferred from the Income-tax officer of an area within which he resides or carries on business to another Income-tax Officer whether within or without the State will not by itself be sufficient to characterise the exercise of the discretion as discriminatory. Even if there is a possibility of discriminatory treatment of persons falling within the same group or category, such possibility cannot necessarily invalidate the piece of legislation .....

This power is discretionary and not necessarily discriminatory and abuse of power can not be easily assumed where the discretion is vested in such high official : Vide Matajog Dobey v. H.S. Bhari . There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law. (Vide People of the State of New York v. John E. Van De Carr. etc. (1905) 199 US 552 : 50 Law Ed. 305).

(41) Their Lordships also quoted with approval their remarks in the Income-tax Investigation Commission case, A. Thangai Kaunju Musaliar v. Venkatachalam Potti , as follows:-

"It is to be presumed, unless the contrary were shown, that the administration of a particular law would be done "not with an evil eye and unequal hand' and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory".

We may add that the same presumption would prevail here and it cannot be assumed that in the selection of land for acquisition the Government or the Commissioner (and he is as high an officer as in Pannalal Binraj's case , the Income-tax Commissioner was) would act with any particular animus of show discrimination between the petitioner and other citizens.

(42) In another case, where the provisions of the Industrial Disputes Act, 1947 were challenged as ultra vires of article 14, their Lordships reiterated same view. The Industrial Disputes Act, 1947 gives authority to the State Government in different circumstances and conditions to take different actions to resolve industrial disputes. It has been given one of several alternative powers e. g. of arbitration, of reference, of conciliation. It was urged that these were powers which could be exercised at the whim of the Government. They could exercise them in a given case and not exercise in another case or use one power in once case and another in a similar case and, therefore, those powers tended to work a possible discrimination against certain persons. The argument was negatived in Niemla Textile Finishing Mills. Ltd. v. The 2nd Punjab Industrial Tribunal, 1957 SCR 335 at p. 349: ((S) AIR 1957 SC 329 at p. 336), as follows:-

"We are unable to accept these contentions. Having regard to the provisions of the Act hereinbefore set out it is clear that Section 10 is not discriminatory in its ambit and the appropriate Government is at liberty as and when the occasion arises to refer the industrial disputes arising or threatening to arise between the employers and the workmen to one or the other of the authorities according to the exigencies of the situation. No two cases are alike in nature and the industrial disputes which arise or are apprehended to arise in particular establishments or undertakings require to be treated having regard to the situation prevailing in the same. There cannot be any classification and the reference to one or the other of the authorities has necessarily got to be determined in the exercise of its best discretion by the appropriate Government. Such discretion is not an unfettered or an uncontrolled discretion nor an unguided one because the criteria for the exercise of such discretion are to be found within the terms of the Act itself".

Then their Lordships indicated the nature of the safeguards and the criteria indicated in the Act. Now, it seems to us that even in the present Act there are sufficient criteria or safeguards indicated and that the discretion vested in the State Government or the Commissioner is not an arbitrary discretion. The Act itself provides the following among other safeguards: The preamble itself indicates that the purpose is a very limited purpose and can only be a public purpose as defined in the Act. A perusal of the definition shows that though it is wide in connotation still it has definite circumscribed limits. Section 4 and 6 also indicate that specific conditions have to be fulfilled before the notices of acquisition can issue. The overriding limitation is of course the public purpose as defined. In Section 6 another alternative is also contemplated by the words "for a company". Now " a company" is defined and so far as acquisition for a company are concerned. Part VII lays down further limitations, particularly the requirements of Section 40 that the appropriate Government shall not give consent unless it is satisfied as to the conditions mentioned in clauses (a) and (b) of Sub-Section (1) of Section 40 and unless an agreement with Government is entered into as mentioned in Section 41. So far as Section 17 is also concerned,

drastic as its provisions are there are strict limitations to the taking of land under that section. We shall show when we come to discuss the point raised upon the provisions of Section 17(4) that those safeguards are stringent and partly in any case have not been fulfilled. That itself would show that arbitrary powers have not been vested in the authorities not do they lead to discrimination.

(43) In the next place, upon the facts, the land which is being acquired from the petitioner is not an isolated piece of land but part of a very much larger area which the Government have declared an area suitable as an industrial area for development. The whole area is being acquired for a public purpose and the petitioner's land is a small part of it. This is not only clear from the affidavit of the Commissioner, dated 15th November 1963 a portion from which we have already quoted, but it is further made clear in the affidavit of Mr. P.C. Nayak (Paragraph 6) the Chief Executive Officer of the Maharashtra Industrial Development Corporation, dated 15th July 1964. The Chief Executive Officer has three indicated that a large block of lands known as the "Wagle Estate" comprising about 310 acres which originally belonged to Government before the Board of Industrial Development Corporation for development as industrial areas. Therefore, even assuming that the law permits any discrimination, it seems to us, that in the present case there is no scope for discrimination against the petitioner. His land is part of a very large area of land which is all being acquired. We hold, therefore, that the challenge to the notifications and the provisions of the Act under article 14 and article 19 fails.

(44) Then we turn to a more substantial contention urged on behalf of the petitioner that in the notifications as well as in the amendment to Section 3(f) contained in sub-clause (2) in-public purpose apparent. Therefore, it was argued, the amendment as well as the notifications infringed the requirements both of Section 6 and of article 31 so far as the amendment is concerned. The definition in Section 3(f) is only an inclusive definition. It does attempt to delineate what is a "public purpose" but merely includes by an artificial extension words "public purpose" occurring throughout the Act and particularly in Section 6 have several times received interpretation in this Court. The expression first came up for consideration not in connection with the provisions of the Land Acquisition Act, but in connection with the use of the expression in a lease deed granted by the then East India Company in favour of the defendant in a suit. The decision is to be found reported in Hamabai v. Secy. of State. 13 Bom LR 1097. An appeal from that decision ultimately went to the Privy Council and the decision of the Privy Council is reported in Hambai Framji Petit v. Secy. of State, 17 Bom LR 100 : (AIR 1914 PC 20). Their Lordships accepted the definition of "public purpose" given by the trial Judge Mr. Justice Batchelor and they adopted it as their own. That definition, which is now the classic definition of "public purpose" appears in the following passage :-

"The argument of the Appellants is really rested upon the view that there cannot be "public purpose" in taking land if that land when taken is not in someway or other made available to the public at large. The Lordships do not agree with this view. They think the true view is well expressed by Batchelor J. in the first case, when he says (p. 1119) :

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

That being so, all that remains is to determine whether the purpose here is a purpose in which the general interest of the community is concerned. Prima facie the Government are good judges of that. They are not absolute Judges. They cannot say: "Sic volo sic jubeo", but at least a Court would not easily hold them to be wrong, the whole of the learned Judges who are thoroughly conversant with the conditions of India life, say that they are satisfied that the scheme is one which will redound to public benefit by helping the Government to maintain the efficiency of its servants". Thus, this decision which, is the basis of all subsequent decisions, lays down two important criteria, firstly that it is not necessary in order that there should be a public purpose that the land which is taken must always be made available to the public at large. It may be that it may benefit only a small section of the community. Secondly, it must be for an object or aim in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned.

(45) The definition of "public purpose" with particular reference to the Land Acquisition Act was also adverted to in a case which we have already referred t9, , Chief Justice Sinha defined it thus:

"It will thus be noticed that the expression "public purpose" has been used in its generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited".

(46) In Somawanti's case. (sup. cit) the definition given by the learned Chief Justice was verbatim adopted (vide para. 34 at page. 164 of the AIR Report) (47) In Babu Barkya's case, a point was raised before the Supreme Court that "public purpose" was not disclosed on the face of the notification impugned in the case a notification under Section 4 of the Land Acquisition Act and their Lordships held:

"It is argued that in terms the notifications does not state that the land sought to be acquired was needed for a public purpose in our opinion, it is not absolutely necessary to the validity of the

land acquisition proceedings that that statement should find a place in the notification actually issued. The requirements of the law will be satisfied it, in substance, it is found on investigation, and the appropriate Government is satisfied as a result of the investigation that the land was needed for the purpose of the Company which would amount to a public purpose under part VII, as already indicated".

Therefore, it seems to us that the question whether there is a public purpose or not does not fall to be considered merely upon the recitals of the particular notification impugned, but must be gathered from the facts and circumstances before the Court.

(48) In this petition in both the notification under Section 4 and 6 the public purpose has been stated as "for the development and utilization of the land as an industrial area". This is further elaborated in the affidavits filed by the Commissioner and the other Respondents. The Commissioner has explained that the idea behind and object of acquiring the land in the instant case and developing industrial area was to ensure orderly and planned development of industries in and around Greater Bombay and elsewhere in the State. It is explained that such development is necessary, because there has been a great growth industry and concentration thereof in and around Greater Bombay. Therefore, it has become necessary to relieve the congestion and the consequent "bad condition of housing, educational and medical facilities etc. The affidavit further points out that the object of Government is that these areas which are being acquired would be properly laid out and planned with some deliberation so that their development as an industrial area would be a proper development and space would be avoided for the future". All this has not be controverted on behalf of the petitioner, and it seems to us that if that be the object, as we have no doubt it is, then the lands sought to be acquired are clearly being acquired for a public purpose. We have no hesitation, therefore, in holding that the purpose mentioned in the notifications is a public purpose as shown therein.

(49) Turning next to the amended definition of "public purpose" in clause (2) of Section 3(f), the words used are "for purposes of the development of area ..... and subsequent disposal thereof in whole or in part by lease, assignment, or sale, with the object of securing further development:. It was urged that the expression "development of areas" is a very vague expression and what is involved is a very vague expression and what is involved in "development" is not indicated. It was even suggested that if the State were to take the areas, merely remove the weeds and cut the grass growing thereon that could also be said to be "development". Here again the contention only amounts to this that taking advantage of the use of the expression "development of areas" the authorities may be enabled to take advantage and making a pretence of "development" dispose of the lands acquired. The argument, however, does not show that the development of areas from public revenues per se cannot be a public purpose. In fact, without

development of areas on a large scale and proper laying out and without proper provision of amenities for sanitation and health, it would not be possible to develop industrial areas at all. Now that is the sole purpose of the definition.

(50) The meaning of the word "development" as given in the Oxford Illustrated Dictionary, 1962, is "gradual unfolding: evolution; realisation of potentialities of site or territory by building or mining". It would thus appear that in so far as these activities are undertaken by the State by the very use of the word "development" a public purpose is implicit, for it means "the realisation of the potentialities of land or territory by building or mining". The subsequent words of the clause, which does not find place in any other definition of "public purpose" have been relied on viz. "and subsequent disposal thereof in whole or in part etc". Those words are also qualified by the words "with the object of securing further development". That again, in our opinion, would justify the disposal of these lands only for a public purpose and not otherwise. Therefore even though by the addition of Sub-clause (2) of Section 3(f) the connotation of the expression "public purpose" has been considerably enlarged by the local amendment, still the new definition has implicit in it the idea of a public purpose. To that extent, therefore, the definition does not conflict with either Section 6 or article 31 which lays it down as a condition to the acquisition of a citizen's property that there should be a public purpose. In that view, we must hold that the amended definition 31 as well as Section 6 of the Land Acquisition Act.

(51) We next turn to the argument advanced on the basis of the proviso to Section 6. Section 6 sub-section (1) runs as follows:-

"Subject to the provisions of Part VII of this Act when the Appropriate Government is satisfied, after considering the report, if any, made under Section 5-A, Sub-section (2), that any particular land is needed for a public purpose, or for a Company a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders:

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

So far as sub-section (1) is concerned, the acquisition could be for one of two purposes viz. (1) that any particular land is needed for a public purpose or (b) for a company. These are initially two limitations upon the power to acquire and these limitations have to be decided upon before the issue of notification by the Appropriate Government and/or now the Commissioner. We have already held that there was involved in the notifications impugned a public purpose. The satisfaction of the Commissioner that there exists a public purpose is also endorsed upon the face

of these notifications and, though it has been held that that is not essential, so far as sub-section (1) of Section 6 is concerned, the notifications could be said to be in order. But there is then the proviso to Section 6. The relationship of the proviso to the parent section and its effect has also been indicated is one of the recent cases which came before the Supreme Court Valjibhai v. State of Bombay . After considering the proviso to sub-section (1) Mr. Justice Mudholkar who delivered the judgment on behalf of the Court observed in paragraph 7 as follows:

"We must, however, point out that before effect can be given to a notification under sub-section (1) of Section 6 of the Land Acquisition Act the terms of the Proviso to that section should be satisfied".

Then the learned Judge quoted the section and the proviso which we have already reproduced above and in paragraph 8 observed.

"The proviso clearly precludes the Government from making a notification under sub-section (1) of Section 6 unless (a) the compensation to be awarded for such property is to be paid by a company or is to come (b) wholly or partly out of (I) public revenues or (ii) some fund controlled or managed by a local authority".

Thus, it has been clearly laid down and that is the plain effect on the language of the proviso itself, that unless the conditions in the proviso are fulfilled, the declaration under sub-section (1) of Section 6 cannot be made. If such a declaration is made and it is found that the terms of the proviso have not been fulfilled, the declaration will not be a declaration under sub-section (1) of Section 6 with the result that the subsequent provisions of Section 6 would be inapplicable to it. Thus, though we have held that a public purpose is involved within the meaning of the parent sub-section (1) of section 6, we must turn to consider whether the terms of the proviso have been fulfilled in the instant case.

(52) Now, the proviso contemplates two alternative conditions for the making of the declaration under sub-section (1) of Section 6; firstly that the compensation to be awarded for such property is to be paid by a company of alternatively wholly or partly out of public revenues or some fund controlled or managed by a local authority. Of these two conditions, the first cannot upon the terms of the notifications and the pleadings on behalf of the State at all apply here, for it is not the case of the State that the acquisition in the instant case was for a Company or that the compensation to be awarded for such property was to be paid by a Company. On the other hand, the stand has been expressly taken at least in the arguments, that the compensation was to come wholly or partly out of public revenues. Of course, we may say at this stage that the learned Advocate General urged that in the case the entire funds for the acquisition were to come out of public revenue, but it is not necessary for him to go as far as that for even if they were to come

partly out of public funds, the proviso would be fulfilled. It is the case of neither party that any amount was to come out of funds controlled or managed by a local authority. We, therefore, turn to scrutinise the facts as they appear upon the affidavits and the numerous documents which the parties have placed before us. But before we do so, we may here observe that the self-same facts and documents are also germane to a consideration of the question, which we will next discuss, whether the acquisition was really for a Company or for a public purpose and, therefore, we could deal with the facts here under both these heads and indicate what our conclusions are upon those facts.

(53) We have already referred to the first affidavit filed by Mr. Patwardhan, the Commissioner of Bombay Division and the respondent No. 1 before us. He was also the authority who signed all the notifications in the instant case, whether under Section 4, 6 or 9 of the Land Acquisition Act. He was, therefore, the person most vitally concerned with the present acquisition and with requisite declarations in the notifications. In answer to the ground made out in the petition in paragraph 8(a) that the public purpose mentioned in the notification is not a public purpose nor can the land be said to be acquired for a public purpose at all his reply was that the land was acquired for a public purpose viz. "for the development of the said land along with other lands acquired under the said notification as an industrial area". Then the learned Commissioner made the statement:-

"I say that the said land is to be acquired from the funds of the Maharashtra Industrial Development Corporation which is a Government of Maharashtra Undertaking financed by the State Government from public funds and are intended to be developed from the said funds and to be subsequently dealt with by lease or sale in order to develop the said area as industrial area".

This statement was made by the Commissioner on 4th November 1963. Thereafter the Commissioner filed another affidavit on 23rd April 1964. In that affidavit he purported to answer the constitutional points raised by the petitioner by way of amendment of his petition under article 31(2) and article 19(f) and (g) of the Constitution. It was only on 24th June 1964 that the Under Secretary to the Government of Maharashtra in the Industries and Labour Department. Mr. H. S. Nargund, filed a further affidavit "in order to correct a misstatement a fact occurring in the said affidavit sworn by Shri Patwardhan". In that affidavit he bluntly contradicted the statement of the Commissioner, Bombay Division and alleged that he had made certain statement which were incorrect. The necessary passage from that affidavit is as follows:-

"Para 2:- I am making this affidavit in order to correct a mis-statement of fact occurring in the said affidavit sworn by Shri Patwardhan.

Para. 3 :- In paragraph 10 of the said affidavit dated 4th October, 1963 (the date is that of its

being sworn, not the date on which it was filed in Court), it has been stated "the said land is to be acquired from the funds of the Maharashtra Industrial Development Corporation". I say that the said lands are being acquired by the State Government for the development of the lands as an industrial area and the compensation payable for the said lands was intended to be paid and is to be paid from public revenues out of the consolidated fund of the State of Maharashtra and the necessary provision therefor has been made in the Annual Budget Estimates of the Industries and Labour Department of the State Government. The sanctioned amount will be paid by the Government to the Special Land Acquisition Officer concerned for payment of compensation according to his Award to the interested persons. An Extract of the said Budget Estimates for the year 1964-65 which also shows the estimates and revised estimates for the financial year 1962 - 63 and 1963-64 is annexed hereto and marked exhibit 1".

In the next paragraph the Under Secretary referred to "the policy of the Government" and stated "the lands would be placed at the disposal of the Maharashtra Industrial Development Corporation as provided in Section 40 of the Maharashtra Industrial Development Act, 1961".

(54) We have already indicated that the reference to Section 40 was hardly relevant since it was not brought into force in the area concerned. It may be stated here that on the date on which the Under Secretary made his affidavit Mr. J. H. Patwardhan was still the Commissioner of the Bombay Division. It will also appear from the affidavit of the Under Secretary that the stand taken in that affidavit is at complete variance with the stand taken in the Commissioner's affidavit. According to the Commissioner, the acquisition was to be made from the funds of the Maharashtra Industrial Development Corporation, that is to say the M. I. D. C would be paying for the cost of acquisition, whereas the Under Secretary's affidavit is that the acquisition is wholly by the Government and will be paid for from Government funds or public revenues. It is not surprising, therefore, that when this new position was taken up the petitioner bitterly complained about it. In an affidavit which he filed on the 14th July 1964, which in our opinion he was entitled to file in view of the change in the stand of the respondents, the petitioner attacked the affidavit of Mr. Nargund and stated in para. 2:

"Realising that on the statements made in the said affidavit of Mr. Patwardhan in view of the position in law as clarified by the Supreme Court the Petition was bound to succeed and the acquisition proceedings would be declared illegal, in an improper attempt to some how retrieve the position, another affidavit was thereafter filed by one H. S. Nargund, Under Secretary, Industrial and Labour Department, Government of Maharashtra, stating that there was a mistake in the affidavit of the 1st Respondents referred to above ....."

The petitioner through his attorneys had asked for particulars from the respondents and particularly from the State and the Maharashtra Industrial Development Corporation. The

petitioner was allowed to inspect the documents by exchange of notices between the attorneys of the two parties. The said particulars have been set out in his affidavit of 14th July 1964 to show how upon the documents and the reply to the particulars the acquisition was indeed one from the funds of the Maharashtra Industrial Development Corporation and not from the shall come to these documents a little later. But we must here refer to the further affidavits. After the arguments had proceeded for several days and the petitioner had attached the affidavit of Mr. Nargund as useless, a further affidavit by Mr.Patwardhan came to be filed on 14th July 1964. In that affidavit, the Commissioner stated in paragraph 2:

"In Paragraph 10 of my affidavit dated the 4th October 1962, I have stated "the said land is to be acquired from the funds of the Maharashtra Industrial Development Corporation". I say that I made that statement on the basis of the information derived by me from the records of my office which records alone were perused by me and were available to me at the time when I made the said affidavit. I did not have in the said records or before me the order of the said records or before me the order of the State Government dated 27th February 1963, the various provisions in the Budget Estimates of the State of Maharashtra, the entries in the books of the Accountant-General for the State of Maharashtra or the books of account of the Maharashtra Industrial Development Corporation".

In paragraph 3 it is further stated:

"At that time when I made the said affidavit, I believed that the compensation for the lands required for acquisition which are the subject matter of the above petition was to be paid for out of the funds of the Corporation. I believed so because of a statement in the Corporation's letter dated 7th November 1962, in which it was stated that 'the funds to meet the cost of acquisition will be provided by the Corporation in due course".

Thus the learned Commissioner went back upon his first affidavit in toto, and the second affidavit which he filed merely supported the affidavit which he filed merely supported the version which was subsequently advanced by Mr.Nargund. But even here the ground for correction was not that the Commissioner made a wrong statement, but that he was only partially informed and therefore a mistake crept in.

(55) But having is a Maharashtra State Government undertaking incorporated under the Maharashtra Industrial Development Act, 1961, and all its funds are contributed by the Government or raised in the open marked by loans guaranteed by the State Government. 'The Corporation is an agent of the Government' for carrying out industrial development in accordance with the provisions of the said Act and the directions of the Government issued from time to time". (The italicized (here into ' ') is ours).

(56) He further added:

"I did not apply the provisions of Chapter VII of the Land Acquisition Act for the said acquisition as I was of the view as stated Land was to be acquired from the funds of the Maharashtra Industrial Development Corporation (sic) which was a Government of Maharashtra undertaking financed by the State Government from public funds and were intended to be developed from the said funds. I also did not know at the time when I made the affidavit that the Government had in fact made payment of compensation for the said acquisition out of the consolidated funds of the State, because there was not on my record at the time and there is not even now a copy of the Government's Order dated 27th February, 1963, which was shown tome before I made this affidavit".

"I say that it is now apparent from the order of the State Government, dated 27th February 1963, and the various provisions in the Budget Estimates of the budget of the State of Maharashtra that the true position is that the compensation for the acquisition of the said lands is to be paid from the consolidated fund of the state by the State Government and not from the funds of the Corporation".

Supplemental to these several affidavits was another affidavit filed by one R. Seshadri Assistant Accounts Officer, from the office of the Accountant-General Maharashtra State who presented a number of documents with the affidavit which he sought to prove by that affidavit. We shall refer to the documents filed a little later.

(57) It may be noticed that till this stage, the reply to the petition was made only by one or more officers of Government. The Government itself filed no return. The Maharashtra Industrial Development Corporation which was cited as the 4th respondent in the petition, was also nowhere in the picture and had not made any statement before this Court. On 15th July 1964, however, after arguments had proceeded for the better part of a week an affidavit was filed by Mr.P. C. Nayak, the Chief Executive Officer and Member-Secretary of the Maharashtra Industrial Development Corporation. That affidavit in paragraph 6 the Secretary of the Corporation supported the further stand taken by Mr. Patwardhan in his third affidavit that the Corporation was the agent of the Government of Maharashtra. This will clearly appear from paragraph 6. The Secretary of Corporation indicated in paragraph 7 that a sum of Rs.20 lakhs was paid by the Government of Maharashtra to the Special Land Acquisition Officer, Ulhas Valley Project out of which a part of the compensation for the acquisition of the lands for the Project has already been paid to interested persons and that the Special Land Acquisition Officer drew the said sum put at his disposal by the Government on an abstract bill from the Thana Treasury directly. It was disclosed that out of this amount Rs.3,78,000 were paid by the Special Land Acquisition Officer as advance compensation to persons interested in the lands acquired by the impugned notification

and who had applied and made out a case for payment of advance compensation. Appended to his affidavit is a list of such persons and the amounts paid to them. The Secretary then added:

"The total advance compensation paid by the Special Land Acquisition Officer out of the said sum of Rs.20,00,000 as on 2nd July 1964 is Rs.11,19,850. The balance of Rs. 8,80,420 (there is a mistake in the figure here which is Rs.8,60,420- which mistake was accepted by counsel) is still lying with the Special Land Acquisition Officer in the Thana Treasury, which is in the hands of and under the control of the Government and over which the Maharashtra Industrial Development Corporation has no control". (The words within the brackets are ours).

In paragraph I the Secretary added:-

"I say that the Government of Maharashtra has not advanced any loan in cash or kind to the Corporation upto 31st March 1963, except a sum of Rs.20,00,000 of which Rs.5,00,000 was received by the Corporation from the Government on or about 24th August 1962, Rs.5,00,000 on or about 15th March, 1963 and Rs.10,00,000 on or about 30th March ,1963. The sum of Rs.10,00,000 received by the Corporation from the Government on or about 30th March, 1963 is earmarked by the Government especially for the purpose of constructing a Railway Siding at Pimpri whereas the other two amounts of Rs.5,00,000 each have been loaned to the Corporation for current expenses of the Corporation. I say that a further sum of Rs.64,44,132 has been received by the Corporation thereafter for the execution of certain water supply and other schemes in industrial areas. I say that not a single paisa of these amounts received by the Corporation has been paid by it to the Special Land Acquisition Officer, Ulhas Valley Project, Thana or to any other officer or agent of the Government for the purpose of paying compensation for lands acquired by the impugned Notification or by any other Notification in other areas".

In Paragraph 13 the Secretary stated :

"I submit that the amounts paid by the Government for acquisition of lands are not loans by Government to the Corporation and cannot be so because the lands are not acquired by or for the Corporation. In developing the lands as an industrial area, the Corporation is carrying out the Five Year Plan objects of the Government as its agent. I further submit that there cannot be a loan between the Government and the Corporation unless and until there was an agreement between the Government and the Corporation setting out the terms and conditions of the loan such as the time and period of repayment, the rate of interest, the security if any for repayment of the loan and the consequences of any default on the part of the debtor in carrying out the terms of the agreement". After taking the stand that the Corporation is carrying out the works as an agent of the Government, the Secretary of the M .I. D. C. has further come out with a statement which shows that in all probability all his previous statement and the varying stand of the other officers

may be incorrect. Towards the end of paragraph 13 he stated :

"Such an agreement with Government has to be in the manner laid down by the Constitution of India. No such agreement has been arrived at between the Constitution and the Government. Section 21 of the Maharashtra Industrial Development Act, 1961 also required prior appropriation by the State Legislature by legislation and an order from the Government before any grant, subventions, loans or advances could be made to the Corporation. 'It is further provided therein that such grants etc. are to be made on terms and conditions made after consultation between the Government and the Corporation'. Though consultations are going on between the Government and the Corporation for determining the arrangement between them as regards the lands that have been and may be entrusted to the Corporation for development 'no final decision has yet been arrived at' (Italicized (there into ") is ours).

The Secretary next recounted all the several steps taken to finalise the accounts of the Corporation in paragraph 14 and he stated:

"At the 20th meeting held on the 9th February 1964, the Corporation decided to seek the Expert advice of one Shri G. P. Kapadia, Chartered Accountant, and therefore appointed Shri G.P. Kapadia to advise the Corporation" and it was only at the 25th meeting held on the 13th and 14th July 1964, long after the arguments in the present petition had commenced before this Court, that the Corporation adopted the statement of accounts for the year ending 31st March 1963 and for the year ending 31st March 1964.

The Secretary added:-

"In these Accounts as adopted, by the Corporation the Corporation has taken the view that since it is functioning mainly as an agent of Government working for an on behalf of the Government as far as the development of industrial areas and estates are concerned no question of payment of any interest to Government can arise in respect of funds expended by Government for lands that may be entrusted by the Government to the Corporation for the purpose of development or on the cash advances that may be made by the Government to the Corporation ..... The Corporation felt that these provisions of the Act made the Corporation in substance a limb of the Government. The Corporation has adopted the said accounts on the basis that all amounts expended for the development of industrial areas and estates (including amounts expended by the State Government for the acquisition of lands for industrial development which are entrusted to the Corporation) and all income received in such development as expenditure incurred on behalf of and income received on behalf of State Government."

These allegations in the several affidavits filled on behalf of the officers of Government or of the

Corporation or the Commissioner were further controverted by the petitioner in his affidavit dated 21st July 1964.

(58) It is patent that the case on behalf of the Commissioner, the respondent No. 1 before us, has been improved from time to time and the original stand taken in the first affidavit of the Commissioner has clearly been abandoned. Not merely that, but the stand subsequently taken as to the source of the funds for the acquisition of the subject-matter in dispute, is in flat contradiction to the stand taken in his first affidavit. No doubt, the Commissioner has 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 states and normally having regard to the fact that a high public officer has thus admitted that he had made mistaken statement in an affidavit because of partial information, we should not have insisted upon holding him to his statement in the first affidavit provided we were satisfied that the mistake was a genuine mistake. But in support of the stand taken both on behalf of the Commissioner as well as on behalf of the State in the arguments - though no affidavit has been filed on behalf of the State a large number of important documents have been filed by the officers concerned, and some by the petitioner after taking inspection of Government files and after exchanging notices to furnish particulars and receiving replies to those particulars. It will be necessary, therefore, to first look into those documents to ascertain what is the true position and whether upon those documents it does appear that an error has been committed by the Commissioner in making his first affidavit.

(59) Before, we go into these documents, however we may at this stage conveniently touch upon a point arising upon these pleadings and which does not depend for its decision on the question whether a mistake was made by the Commissioner or not. We are called upon to consider this question as to the source from which the funds came in order to decide whether the terms of the proviso to Section 6(1) have been fulfilled or not and the only condition so far as the existence of a public purpose is concerned is that the compensation to be awarded for the property to be acquired is to be paid "wholly or partly out of public revenues". There is obviously no question here "of some funds controlled or managed by the local authority". Now if a notification is issued by a public officer declaring that there exists a public purpose, it seems to us that implicit in that declaration must be read a determination or satisfaction as required by the terms of the proviso that the compensation to be awarded for the property to be acquired is to be paid wholly or partly out of public revenues. Unless such a decision is first reached by the State Government or the Commissioner making the declaration under Section 6, they cannot issue that declaration having regard to the proviso. But here the Commissioner has issued such a declaration. In the notification under Section 6 he has categorically stated that the lands are needed for the public purpose specified in column 4 of the said schedule. That means in its turn that he had regard to Section 6, and must have come to the conclusion that the funds for the acquisition of the land are

to be paid wholly or partly out of public revenues, and yet it is some what surprising to find that it is precisely upon that point that the Commissioner has canvassed before us that he made a mistake. If as be says he was only partially informed or wrongly informed and believed that wrong information, then we wonder how he made up his mind that a public purpose was involved and put that declaration in the notification signed by him. The error he made whether due to partial information or wrong information was as to an essential requirement of the law; a requirement which has to be stated in the notification; a requirement which is a precondition to the issuance of the declaration. If he made a mistake as to that preliminary requirement it seems to us that he must necessarily make mistake in his decision as to whether there exists a public purpose or not. It is clear, therefore that upon the admission of the Commissioner that he has made a mistake as to the source from which the funds came, he could never have come to a correct decision as to whether there exists a public purpose or not. It is patent that there was no application of mind or a wrong application of mind by Commissioner upon the facts then known to him. That in itself, in our opinion would vitiate the declaration which he has made and would vitiate the notification under Section 6.

(60) But apart from that, we now turn to the facts and, in our opinion, the facts which we will presently set forth eloquently indicate that the amounts were paid by the State \Government to the Maharashtra Industrial Development Corporation as a loan and that it was on the 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.

(61) In the affidavit filed by the Under Secretary he produced in support of his statements an extract from the detailed estimates for the year 1964 - 65 from the State Budget of the Department of Industries and Labour, "Detailed account No. 96-C, Capital Outlay on Industrial Development". In this extract under item No.3 is shown an "expenditure by the State Government for the Maharashtra Industrial Development Corporation for industrial development (Ind-3)". There is an amount of Rs.30 lakhs earmarked in the estimates for 1963-64 and the budget estimate for 1964-65 is Rs.25 lakhs. The amounts actually expended in the previous year are shown in the first column under the heading "Accounts 1962-63". Thus there is nothing shown in the year 1962-63 as expended by the State Government for the Maharashtra Industrial Development, but under the fourth item is shown "Expenditure on Board of Industrial Development for development of Industrial area" and then the expenditure is divided into two categories (1) "Establishment" under which no expenditure is shown in 1962-63 and (2) "Works" under which also no details of the expenditure are shown against the detailed item but only a total is shown as Rs.45,08,919. Under this head are two items shown Rs.2,42,263 and Rs.42,66,756 thus making the total figure of expenditure for 1962-63 as Rs.45,08,919. It may first of all be mentioned that the expenditure even as shown is the expenditure not on the Maharashtra

Industrial Development Corporation but on the Board of Industrial Development for development of Industrial Area., that is to say the old Board the Government agency which was on the 5th August 1962 replaced by the Maharashtra Industrial Development Corporation. Now it is necessary to consider certain explanations offered relative to these figures.

(62) The extracts of the Budget Estimates were filled because the petitioner asked for particulars by the letters exchanged between the attorneys of the two parties dated respectively 27th June 1964 (No. YMD/11258/64) and 6th July 1964 wherein matters were clarified with reference to the increase in the Budget Estimates and a long explanation was given by the attorneys for the Respondents in their letter of the 6th July 1964. The explanation which they gave was as under.

"The relevant entries for the purposes of the present petition are those appearing under the column "Accounts 1962-63". It will appear from the extract (page 2 of the Exhibit to the Affidavit of Shri Nargund) that during the financial year 1962-63, a total sum of Rs.45,08,919 was expended by the Government on various schemes specified under sub-head (4) "Expenditure on the Board of Industrial Development for development of Industrial areas" under the Account Head "C-Miscellaneous Schemes in the Third Five Year Plan". "Although the budget sub-head refers to the Board of Industrial Development, the expenditure incurred under the said sub-head was partly on account of industrial development undertaken by Government through the Board of Industrial Development constituted by it and partly for the Maharashtra Industrial Development Corporation which was constituted on the 1st of August 1962 and which replaced the Board. Out of the said sum of Rs.45,08,919 a sum of Rs.20 lacs was drawn by the Special Land Acquisition Officer, Ulhas Valley Project, Thana, on the 29th March 1963 for the purposes of payment of compensation to owners of acquired land including' inter alia 'your clients' and other interested persons. The said amount was drawn by the said Special Land Acquisition Officer out of the consolidated funds of the State of Maharashtra from the grants voted by the Legislature for the year 1962-63. The said amount was not paid to the Maharashtra Industrial Development Corporation but as already stated, was directly drawn from the Government treasury by the said Special Land Acquisition Officer, who is an employee of and is subject to the supervision and control of the Government of Maharashtra and was utilised by him in payment of such compensation claim ..... 'Although for the purposes of Government accounts and audit, the amounts so sanctioned and drawn may have been described as "a loan" to the Maharashtra Industrial Development Corporation, this was only for the purpose of financial accounting and, therefore, only a national debit. Precise nature or terms of the relationship between Government and the Corporation' as regards the transaction 'have not been finally determined' so far and there is no express or implied agreement of loan or other wise between the Government and the Corporation" (Italicized (here into ' ') is ours).

In another paragraph the attorneys on behalf of the respondents stated "No loans have been advanced by the Government to the Corporation for the acquisition of land in the village Panch, Pakhadi near Thana, (the village with which we are concerned) or for acquisition of land for industrial development in the Ulhas Valley Project". This is virtually the stand which has been subsequently taken in all the affidavits filed before us, whether by the Commissioner himself or by the Secretary to the Maharashtra Industrial Development Corporation.

(63) In the arguments which were advanced on the basis of this pleading the learned Advocate-General placed much reliance on two documents: Firstly the Memorandum No. IDC-1063/16146-IND-1 dated 27th February 1963 issued in the name of the Government of Maharashtra and signed by Mr. Nargund who at the time was the Assistant Secretary in the Industrial and Labour Department of the Government of Maharashtra. He communicated this Memorandum to the Maharashtra Industrial Development Corporation by his letter No.IDG-1063/16146. Pursuant to this Memorandum the Special Land Acquisition Officer Ulhas Project drew the amount of Rs. 20 lakhs and signed a receipt exactly one month later on 27th March 1963 (Page 72). This is the second important document relied on. Now the argument has been that these documents show beyond any doubt that the amount of Rs.20 lakhs passed directly from the consolidated fund of the Government to the Special Land Acquisition Officer and that, whatever other versions may have been given in the accounting or subsequent entries made in the books of the respondents Nos. 3 and 4 were only for purposes of accounting as explained in the particulars.

(64) We would have ordinarily accepted these statements on behalf of very responsible parties like the Commissioner and other officers of Government and the Maharashtra Industrial Development Corporation, but for the fact that not only is there in these three documents an inherent indication that the amounts were probably loans but that there have been produced before us five other vital documents which show that the amounts could have been paid to the Maharashtra Industrial Development Corporation, only on the basis of loan.

(65) Turning to the three documents relied on it may be mentioned in the first place that in the Memorandum of Government the subject is stated as "Compensation for land acquired 'by' the M . I. D. C." (the italicized (here into ' ') is ours). That does not show that Government was acquiring the lands with its own moneys. The description is in consonance with the first affidavit of Mr. Patwardhan. But obviously one cannot make much out of the mere mention of a subject at the head of a memorandum or use it against the Government, but in the body of the Memorandum is the decision Government and that, in our opinion, is decisive. The Memorandum says "..... that Government is pleased to place an amount of Rs.20,00,000 (Rupees Twenty Lakhs only) at his (the Special Land Acquisition Officer, Ulhas Valley Project)

disposal for the purposes of payment of land compensation in respect of land acquired for M. I. D. C. (Maharashtra Industrial Development Corporation)". Then in paragraph 2 follow the instructions as to which head in the Budget the amount is to be debited, and there also the expression used is "Expenditure by the State Government for M. I. D. C." But what is, in our opinion, crucial is the recital in the third paragraph of this Memorandum which presumably communicates the decision of the Government. The third paragraph says, "The expenditure for the aforesaid purpose shall be recovered from the M. I. D. C.".

(66) It seems to us that the moment Government resolved that this expenditure of Rs. 20 lakhs for payment of land compensation in respect of land acquired for the Maharashtra Industrial Development Corporation shall be recovered from the Maharashtra Industrial Development Corporation, the expenditure 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. That in substance would make it a loan whatever gloss may be put upon the transaction. We cannot understand the State Government spending moneys directly for acquisition stating that subsequently the expenditure will be recovered from the Maharashtra Industrial Development Corporation. Thus, these documents, which the learned Advocate General said, were crucial documents leave the matter in doubt as to whether it was an outright payment or a loan.

(67) But there are several other documents and entries which indicate that the amount was paid as a loan and nothing alse. Long before the resolution of the Government was passed correspondence was going on between the Maharashtra Industrial Development Corporation and the first respondent the Commissioner and on 7th November 1962 the Chief Executive Officer Mr. P. C. Nayak (the person who has filed the affidavit before us) wrote to the Commissioner a letter No.L/W/52, dated 7th November 1962 in which he stated:

"The Maharashtra Industrial Development Corporation has undertaken the development of the area in the village Panch-Pakhadi Taluka and District Thana situated on the outskirts of the Greater Bombay Municipal Limits. The development work of first and second phase has been completed.

The Corporation now proposed to acquire additional land to the south and north of the land already in its possession within the limits of village Panchapakadi".

It is not in dispute that it is this land which comprises about 100 acres in which is included the area belonging to the petitioner and the acquisition of which is the subject of challenge before us. Then the Chief Executive Officer proceeds to request the Commissioner or Bombay Division to undertake acquisition and the request was in the following terms:-

"A side plan of the area is also enclosed, Please undertake acquisition of the land shown in the accompanying statement under the provisions of the Land Acquisition Act and arrange to publish Notifications under Section 4 of the said Act for each of the four blocks as soon as possible. the purpose to be stated in the Notification should be (sic) for "development and utilisation of the said land as in industrial area. "Funds to meet the cost of acquisition will be provided by the Corporation in due course". (Italicized (here into ' ') is ours). It is clear that this letter of the Secretary of the Corporation is the genesis of the acquisition in the present case. It was written in November 1962 and the resolution of Government on which the Advocate General relied was passed in March 1963. We think this letter is of prime Importance for two reasons. Firstly, it clearly shows beyond any doubt that all the subsequent proceedings taken for acquisition of the land were for the Maharashtra Industrial Development Corporation and it is not disputed that the Maharashtra Industrial Development Corporation is a Company within the meaning of the Land Acquisition Act. Secondly, it shows that there must have been an arrangement between the Maharashtra Industrial Development Corporation and the State Government that "the cost of acquisition will be provided by the Corporation in due course". It is not alleged that this letter of 7th November 1962 was not acted upon. On the other hand, the Commissioner has in the third affidavit which he has filed crying "pecavi". sworn to it that he acted only upon that letter'. In paragraph 3 of his affidavit dated 14th July 1964 he stated.

"At that time when I made the said affidavit)the first affidavit which has now been withdrawn), I believed that the compensation for the land required for acquisition which are the subject matter of the above petition was to be paid for out of the funds of the Corporation. I believed so because of a statement in the Corporation's letter dated 7th November 1962, in which it was stated that "the funds to meet the cost of acquisition will be provided by the Corporation in due course".

Then in paragraph 4, the learned Commissioner proceeded to state that "On receiving the Corporation's proposal for acquisition and after considering the contents thereof and being satisfied that the lands mentioned in the Corporation's letter were needed for the public purpose mentioned therein, I set the machinery of the Land Acquisition Act in motion for acquiring the said lands". Nothing is more eloquent than the two paragraphs read in the context of the said letter, dated 7th November 1962 as to the manner in which the requisite satisfaction was reached under Section 6 of the Land Acquisition Act: It is nowhere stated in any of the affidavits that the letter dated 7th November 1962 was not acted upon. The Commissioner on his part has said that that was letter before him on the basis of which he proceeded to acquire the lands. the satisfaction was originally to be that of the State Government, but by virtue of the amendment the Commissioner's satisfaction is now sufficient under the law. Since the Commissioner issued all the notifications, we suppose that in this case it was principally on his satisfaction upon which the acquisition proceeded. Now, therefore, the Commissioner admits that it was on the letter of 7th

November 1962 that he acted. That letter clearly shows that the acquisition was for the company and also shows that the funds for the acquisition were to be provided by the Corporation. The languages of the letter, in our opinion, is plain enough and it can only mean that the Corporation was paying for the acquisition. That is also what the Commissioner said in his first affidavit and in our opinion rightly.

(68) The other documents which have been produced also support only this conclusion and none other. There has been produced a ledger of the Maharashtra Industrial Development Corporation and at page 5 of that ledger are shown the amounts received by the Maharashtra Industrial Development Corporation for capital expenditure under the heading "Capital Receipts". The heading of the Account is "Loans from Government of Maharashtra". We have already said that the amount was actually transferred from the Governmental funds to the Land Acquisition officer on the 27th March 1963 and in this Ledger is shown a receipt by the Maharashtra Industrial Development Corporation of Rs. 20 lakhs in March 1963 and that receipt is vouched for by the corresponding entry in the Journal T. E. 10 against which is shown an amount of Rs. 20 lakhs. It has been explained to us that "TE" stands for "Transfer Entry". Therefore, in the very month in which the amount was paid by the State Government to the Special Land Acquisition Officer, the Maharashtra Industrial Development Corporation credited the amount in its books by a transfer entry showing that the amount had been transferred to them. Similarly the journal account of the Maharashtra Industrial Development Corporation has been produced (page 114) and the expenditure incurred by the Special Land Acquisition Officer has been credited into the account of the Government and on the debit side, we find the following entry 'Loans received from the State Government by way of expenditure incurred by this S. L. A. O. in payment of the land compensation'. (italicized (here into ' ') is ours). In column 8 is referred Ledger Folio No. 5 which is the same page number mentioned in the ledger in the earlier account. Thus the account books of the Maharashtra Industrial Development Corporation clearly show that Government had given them a loan out of which payment was to be made for the acquisitions exactly the case which the Commissioner initially set forth.

(69) It is of some significance that these entries in the journal accounts purport to have been made on the 18th August 1963. The payment were in March 1963 and though it is said that they were not loans, but out right payments to the Special Land Acquisition Officer by Government in March 1963 and that the Maharashtra Industrial Development Corporation had nothing to do with that amount, yet we find that on 19th August 1963 the Maharashtra Industrial Development Corporation clearly stating in its accounts that the same amount of Rs. 20 lakhs was a loan received from the State Government.

(70) It was urged that the State Government cannot be held bound by the entries made by the

Maharashtra Industrial Development Corporation in its accounts and that, therefore, the documents filed on behalf of the State Government alone should be looked at, viz. the receipt passed by the Special Land Acquisition Officer and the Memorandum of Government. We have already indicated that even the receipt of the S. L. A. O. and the Memorandum of Government enclosed in the letter of Mr. Nargund to the Maharashtra Industrial Development Corporation do not negative the grant of a loan, for it has been clearly stated that this amount would be recovered from the Maharashtra Industrial Development Corporation. How it was to be recovered is not mentioned in that letter, but obviously whatever arrangement was arrived at, was arrived at in consultation with the Maharashtra Industrial Development Corporation and in the absence of any material to the contrary it would be reasonable to infer that it could not be unilateral decision of the Government. In fact, the entire acquisition was based upon the letter dated 7th November 1962 written by the Chief Executive Officer of the Corporation to the Commissioner, Bombay Division, and in that letter also the Corporation undertakes to pay for the acquisition. All the subsequent entries are in consonance with that declaration. In the face of this overwhelming material, we cannot but hold that upon the facts it is amply established that this 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 Maharashtra Industrial Development Corporation that it would be a loan to them and repayable by them. Undoubtedly, in the exigencies of governmental business and the urgency of pushing through development plans Government may not have decided the detailed terms on which the loan was to be granted and it seems that it was assumed that the government would impose those terms upon the Corporation at some time in the future. One thing is certain upon these documents that the amount must have been paid to the Corporation as a loan and when it was paid to the Special Land Acquisition Officer also, it was paid for and on behalf of the Maharashtra Industrial Development Corporation by the Government. That is what the Commissioner has said in his first affidavit. It was, therefore, in law and in fact the money of the Corporation that was utilised by the Special Land Acquisition Officer for the payment of the compensation.

(71) With regard to the entries in the Budget Estimates filed along with the affidavit of Mr. Nargund, one other circumstance must be here emphasised. Under Section 21 there is specific provision for the grant of loans by the Government to the Corporation. No doubt, the section says, "The state Government may, after due appropriation made by the State Legislature by law in this behalf, make such grants, subventions, loans and advances to the Corporation as it may deem necessary for the performance of the functions of the Corporation under this Act". Therefore, a loan can only be made after "due appropriation made by the State Legislation by law in this behalf". That appropriation is shown by the production of the extracts from the Budget Estimates. These are the appropriations made by the State Legislature by law. Therefore, the preliminary condition for the grant of the loan was also fulfilled. It will bear a little repetition

to point out that the particulars supplied by the respondents' attorneys in terms say that, included in the consolidated amount of Rs. 45,08,919 was the amount of Rs. 20,00,000 received by the Special Land Acquisition Officer and that the rest of the expenditure was on account of the Industrial Development undertaken by the Government through the Board of Industrial Development constituted by it. That is also what the Budget Head shows. Thus so far as the expenditure other than the amount of Rs. 20 lakhs included in the amount of Rs.45,08,919 is concerned, it is admitted that it was an expenditure on account of industrial development undertaken by the Board of Industrial Development - the Governmental Agency which as we have said was replaced by the Maharashtra Industrial Development Corporation. If so, it seems to us that section 13 and particularly sub-section (4) says, "All expenditure which the Board of Industrial Development may have incurred before the date of the coming into force of this Act in connection with any of the purposes of this Act shall be deemed to be a loan advanced to the Corporation under Section 21 on that date, and all assets acquired by such expenditure shall vest in the Corporation". Thus, there is no doubt that the balance of the amount of Rs.45,08,919 after excluding the sum of Rs.20 lakhs must by the terms of section 13(4) "be deemed to be a loan advanced date .....". Now, the Budget entry shows that the amount of Rs. 20 lakhs drawn by the Special Land Acquisition Officer in included in the same head of accounts in which the balance after deducting Rs. 20 lakhs is shown; that is to say, the amount of Rs. 20 lakhs drawn by the Special Land Acquisition Officer is also shown in the same Head of accounts as an amount which is deemed to be a loan to the Corporation. The two amounts were, treated on the same footing in the Budget entry. That is the crucial indication which the Budget entry gives. It was the intention even of the Legislature that this amount of Rs. 20 lakhs should be granted as a loan.

(72) In the light of all this evidence we cannot accept the statement in the particulars supplied by the attorneys for the respondents that "although for the purposes of Government accounts and audit, the amounts so sanctioned and drawn may have been described as "a loan" to the Maharashtra Industrial Development Corporation, this was only for the purpose of financial accounting and, therefore, only a national debit". That statement relating to Government accounting and, therefore, only a national debit". That statement relating to Government accounts has not been sworn to on an affidavit by any officer connected with Government nor by the Commissioner who is the respondent No. 1 before us. The State Government is the third respondent but till to day they have not filed a single affidavit in reply to the petition nor is it stated by Mr.Nargund, whose affidavit contradicted that of the Commissioner that he was filing the correct affidavit on behalf of Government.

(73) At the fag end of the proceedings and after the arguments had proceeded for several days an affidavit came to be filed on the 15th July 1964 by Mr. P.C. Nayak, the Chief Executive Officer and Member Secretary of the Maharashtra Industrial Development Corporation and it was

through the mouth of this person that the statement in the particulars supplied by the respondents' attorneys was further sought to be supported. We have absolutely no doubt that in making that statement Mr. Nayak was stating something which was not correct. His statement stands completely disproved by his own letter of 7th November 1962 in which he categorically stated that the funds for the cost of the acquisition will be provided by the Corporation in due course and the affidavit does not explain how he came to make the statement in the letter.

(74) It was pointed out to us that Mr. Nayak did not sign the letter dated 7th November 1962 and it purports to have been signed by one P. M. Kulkarni "for the Chief Executive Officer". Mr. Nayak who has obviously written that letter has not denied its authorship. We do not suppose that Mr. Kulkarni would have the temerity to sign a letter on his behalf the temerity to sign a letter on his behalf which Mr. Nayak had not written or authorised, which Mr. Nayak had not written or authorised. At any rate, Mr. Nayak in his affidavit has not said a word about this letter. If it had to be repudiated, it had to be repudiated by Mr. Nayak but that has not been done. On the other hand, we find that the Commissioner says that that was the only letter on which he relied when he issued the notification. That letter certainly does not support the statements of Mr. Nayak in his affidavit of 15th July 1964. The unfortunate officer has been compelled to make statements which are in flat contradiction to a prior letter written by him and signed on his behalf. In the circumstances, therefore, we hold that the amount of the compensation which was to be awarded for the acquisition in this case along with other lands did not come out of public revenue at all whether in whole or in part. On the other hand, it came only from the Maharashtra Industrial Development Corporation to whom it was given as a loan by the State Government.

(75) The learned Advocate General next argued that even assuming that the amount was given by the State Government to the Corporation as a loan to being with and then the Corporation paid it to the Special Land Acquisition Officer, as we have found, still it must be held that the compensation which was awarded for that the compensation which was awarded for such property was paid wholly or partly out of public revenues within the meaning of the proviso to Section 6. The argument, as we understand it, runs somewhat as follows: That it is the ultimate hand that pays which has to be looked at and it is immaterial in what manner the money is paid for the acquisition so long as the ultimate burden falls upon the public revenue. this contention is based upon certain observations of the Supreme Court in the case which we have already referred to of Jhandu Lal v. State of Punjab . Chief Justice Sinha in stating the decision of the High Court in that case indicated at p. 466 (of SCR) : (at p. 346 of AIR). "It has been pointed out by the learned Single Judge that it was clear from the Government Housing Scheme that a substantial amount to be expended on this Scheme comes out of the Revenues, in the form of subsidies and 'loan' (italicized)here into ' ') is ours) and then the learned Chief Justice in giving the decision of the Supreme Court in the penultimate paragraph of the judgment at p. 469 (of SCR) : (at p. 437

of AIR) observed, "As in the present instance, it appears that part at any rate of the compensation to be awarded for the acquisition is to come 'eventually' from out of public revenues, it must be held that the acquisition is not for a Company simpliciter" (here into ' ' is ours). The learned Advocate General emphasised the word "eventually" and urged that what the learned Chief Justice was clearly laying down was that if the amount in the final ckoning comes from out of public revenues that would be sufficient compliance with Section 6(1) and its proviso No doubt in the judgment referred to there is a reference to "loans" in the passage which we have quoted, which passage is, so to say, in the preambulatory part of the judgment and the word "eventually" finds place in the concluding part of it, but we must indicate that in the whole body of that judgment and we say so with the greatest respect and not with any intention to suggest that anything has been left out in that judgment - there is not the slightest reference or discussion regarding the question of loan or to the question whether if amounts are paid by way of loans and the debtor then supplies funds for acquisition out of that loan, Section 6 would be fulfilled or not. We cannot read into the judgment therefore such a decision simply because of one word used by the learned Chief Justice viz. "eventually" We may also point out that the word "eventually" could as well apply to "subsidies" which in that case had also been given. there were both subsidies and loans and when the learned Chief Justice used the word "eventually" we do not know whether he intended to refer to "subsidies" and "loans" or only to "subsidies". We do not think that that was the decision of the Supreme Court much less than it was the law declared. We do not think, therefore, that Jhandu Lal's case. is an authority for the proposition that even if the State Government grants a loan to the Corporation out of that loan, the acquisition will be wholly or partly from out of public revenues.

(76) On the other hand, we may point out that the view taken in a recent decision of the Supreme Court directly negatives the contention raised. In Valjibhai's case, precisely the same question as it before us had arisen before the Supreme Court. A plot of land was sought to be acquired, because it was required by the State Transport Corporation for constructing offices and other buildings by that Corporation. The notification there no doubt stated that it was to be acquired for the purposes of and at the expense of the State Transport Corporation and upon the facts it was found that the State Transport Corporation was to pay for it as we have done here but then the argument similar to the one here advanced of "the ultimate burden" was advanced and it was thus answered .

"Since, however, the compensation to be awarded for the acquisition is to be paid only by the Corporation and no portion of it was paid by the Government, court it be said that the terms of the proviso to sub-section (1) of Section 6 have been satisfied? It is contended by the learned Attorney General on behalf of the respondent that the funds of the Corporation have themselves come out of public revenue inasmuch as they consist of moneys provided by the State of

Bombay. Even assuming that the funds of the Corporation consist only of the moneys which have been provided by the State of Bombay it is difficult to appreciate how they could be regarded as part of the public revenue. "No doubt the source of the funds would be public revenue but the funds themselves belong to the Corporation and are held by it as its own property. They cannot, therefore, be regarded as "public revenue" in any sense". (the italicized (here into ' ') is ours). It seems to us clear upon an interpretation of the proviso to Section 6 and upon the authorities that when moneys are advanced by the State to a Corporation for the payment of compensation for lands acquired for the Corporation, the compensation to be awarded cannot be said to be paid "wholly or partly out of public revenue".

(77) The finding which we have given, moreover, is in no way in conflict with the provisions of the law by which the Maharashtra Industrial Development Corporation is governed. We have pointed out that under Section 21 of the Maharashtra Industrail Development Corporation Act, the Corporation have the power to borrow loans and that the pre-requisite condition for the grant of loans by Government has been fulfilled. No doubt, the latter part of Section 21 has still to be satisfied viz. the terms of the advances have yet to be settled, as admitted on behalf of the respondents, but since the Budget appropriation has been made the loans granted would still not be illegal. It is also consonant with and conducive to the functions of the Corporations and its general powers as indicated in Section 14 and 15 of that Act.

(78) We now advert to a further stand that has been taken on behalf of the respondents. It is necessary to notice first to all the several developments that the case on behalf of the respondents has undergone. Initially the Commissioner stated on affidavit that the acquisition was from the funds of the Corporation and by the Corporation. Then he was contradicted and the case was put forward in the affidavit of Mr. Nargund, attempted to be supported by some of the documents which we have referred to, that the entire payment was exclusively made by the State Government to the Special Land Acquisition Officer and that the Corporation did not enter into the picture. That is also what the particulars supplied by the respondents' attorneys stated. An explanation was also vouchsafed in order to counter in advance the letter of the Secretary to the Maharashtra, Industrial Development Corporation and the entries in the accounts to which we have referred. The explanation was that the entry of Rs. 20 lakhs in the account books shown as a loan and paid to the Special Land Acquisition Officer was only for the purposes of accounting and national. We have already rejected that stand. Then for the first time in the third affidavit which the Commissioner filed a third stand was taken. The Commissioner casually mentioned to paragraph 5. "The Corporation is an agent of the Government for carrying out industrial development in accordance with the provisions of the said Act and the directions of the Government issued from time to time". Till the time that Mr. Palwardhan filed this affidavit on 14th June 1964 after arguments had proceeded in this Court for a number of days, no question of

the Corporation being an agent of the Government was ever adumbrated in any of the affidavits, nor is it to be found in any of the documents to which our attention has been invited. This which our attention has been invited. This stand was further elaborated in the affidavit of the Secretary to the Maharashtra Industrial Development Corporation Mr. Nayak, He has in his affidavit paragraphs 6 and 14 taken the stand with greater emphasis. We cannot permit such a plea to be taken at such a late stage. It may give rise to disputed questions of fact which were initially not raised. The stand is moreover contrary to the stand taken in the first affidavit of the Commissioner which, in our opinion, represents the true state of affairs. So far as the Maharashtra Industrial Development Act is concerned it is clear that the Corporation is an independent legal entity and function as such, and cannot by any stretch of language of the provisions of the Act be said to be an agent of Government (vide Section 3 (2), 4, 7, 12(2), 13, 15, 16, 19, 20, 21 and 40). The Corporation is an autonomous corporation having statutory powers independent of the State Government's control is several matters. It can by statute own property, hold and dispose it of, enter into contracts, sue and be sued independently of Government (vide Section 3 (2)). It has its own administrative body and constitution (see Section 4) and can hold meetings and take important decisions (see Section 7). It has its own administrative body and constitution (see Section 4) and can hold meetings and take important decisions (see Section 7). It has the power to appoint officers and servants other than the Chief Executive Officer and the Chief Accounts Officer without reference to Government (see Section 12 (2). Section 13 is decisive upon this point, because by Section 13 the statute itself enjoins that the Corporation shall take over and employ the existing staff of the Board of Industrial Development which was a part of Government. One cannot understand an agent of Government taking over as his servants other servants of Government and similarly taking over all obligations, contracts, etc. Made by Government through the Board of Industrial Development (vide Section 12 (1), (2) and (3)). In Section 14 and 15, the Corporation has its functions prescribed by the Legislature and its general powers delineated. These powers even the State Government cannot take away.

(79) Section 19, 20 and 21 give plenary powers in the matter of finance and Section 40 indicates that the Government has to enter into an agreement with the Corporation before placing at its disposal lands vested in the State Government. The section clearly shows that the Corporation will be negotiating and agreeing to terms with the Government a arm's length. Such a Corporation can by no means be said to be an agent of the Government. The mere fact that under Section 3(1) the Corporation has to assist in the rapid and orderly establishment and organisation of industries in industrial areas and industrial estates in the State of Maharashtra, does not show that the Corporation is an agent of the Government, nor the fact that the State Government can give directions as to policy under Section 18 or that the Corporation has to observe the directions of Government regarding the starting of a reserve and other funds under Section 24 is indicative

of agency as such. At any rate, the plea with never taken in time and we cannot allow it to be taken as it has been at a late stage of the proceedings.

(80) The last stand that has also been taken at a somewhat late stage in these proceedings is that everything is uncertain and nothing has yet been decided. The first occasion on which this stand was taken was in the particulars replied by the respondents' attorney on 6th July 1964. There the attorneys stated:

"Precise nature or terms of the relationship between Government and the Corporation as regard the transaction have not been finally determined so far and there is no express or implied agreement of loan or otherwise between the Government and the Corporation".

This thesis again was elaborated in the affidavit of the Chief Executive Officer of the Maharashtra Industrial Development Corporation Mr. Nayak and he has devoted three paragraphs to explaining how no decision was arrived at until the 29th June 1964, (vide the explanation given in paragraphs 13 and 14 of his affidavit). He concluded paragraph 13 by saying "Though consultation are going on between the Government and the Corporation for determining the arrangement between them as regard the lands that have been and may be entrusted to the Corporation for development, 'no final decision has yet been arrived at')italicized (here into ' ') is ours). We do not think we need go into further details of this explanation. We think, we have said enough to indicate that all these varying stands are merely after-thoughts and made to get out of the clear position indicated from the pleadings and upon the documents that a loan was granted to the Corporation and that the acquisition was made by the State for the Corporation, but the Corporation paid the compensation, We have no hesitation in rejecting all these stands. We also hold that what the Commissioner initially stated appears to be the correct position.

(81) We may say one thing, however, that if the last mentioned stand is to prevail there is no doubt upon the law as it stands that the acquisition would ex facie be bad because the notification under Section 6 would be bad. We have already referred to the provisions of Section 6 and particularly the proviso thereof. Under that proviso no declaration can be made by the State or the Commissioner that the land is needed for a public purpose unless and until they are satisfied that the compensation is to be paid "wholly or partly, out of public revenues or some funds controlled or managed by a local authority". It is clear on a plain reading of the sub-section alongside the proviso, that when there is a declaration under the parent clause "that any particular land is needed for a public purpose" the condition laid down in the proviso that the compensation to be awarded must be paid "wholly or partly out of public revenues" must be fulfilled. The first condition mentioned in the proviso "the compensation to be awarded ..... is to be paid by a company" cannot obviously apply to such a case. Similarly where there is a declaration under the

parent clause "that any particular land is needed ..... for a company" the condition in the proviso that "the compensation to be awarded for such property is to be paid by a Company" alone has to be fulfilled. In such a case the clause in the proviso "wholly or partly out of public revenues or some fund controlled or managed by a local authority, for that is not the case of any party. Thus since the declaration in the notification under Section 6 is of a "public purpose" it is clear that the Commissioner must satisfy himself only that the compensation was to be paid wholly or partly from out of public revenues. Now, if the arrangement between the Corporation and the State was in an inchoate state and nothing had been determined and yet money for payment of the compensation had already passed out of the hands of the State Government, and been paid to the Special Land Acquisition Officer we are at a loss to understand how the Commissioner on the date on which he promulgated the notifications was satisfied that the land was needed for a public purpose. He could not be so satisfied unless he knew and ascertained before hand, that the compensation was to be paid wholly or partly from out of public revenues. That was the sine qua non before the power under the sub-section to make the declaration of a public purpose could be exercised and it was on that vital point that the case now built up says that the whole thing was not final and was indeterminate. If so, the satisfaction which the Commissioner has expressed upon the face of the notification must be held to be had and indeed colourable.

(82) We may also say that for another similar reason it must be held colourable. If the subsequent stands of the Commissioner and the Maharashtra Industrial Development Corporation are to be accepted. The Commissioner has stated in his third affidavit that on the date on which he filed his first affidavit on 4th October 1962 he had nothing more before him than his own record (whatever that might be) and the letter of the 7th November 1962 of the Secretary of the Maharashtra Industrial Development Corporation. He did not have before him the order of the State Government on 27th February 1963 or the budget provision and the other materials. How then did be come to the conclusion that the lands were needed for a public purpose? In fact the letter of Mr. Nayak should really have informed him that the lands were needed for a Company (the Maharashtra Industrial Development Corporation) and certainly not for a public purpose. That letter in terms says that "the funds will be provided by the Maharashtra Industrial Development Corporation". How then was the Commissioner satisfied upon that statement in that letter that the land was needed for a public purpose? If any conclusion was to be drawn from that letter the only conclusion that could be drawn was that the funds were to be provided by the Corporation and yet, what is solemnly declared in the notifications is that the lands are needed or are likely to be needed for a public purpose. Here again, upon the very admissions of the Commissioner - the Officer promulgating the notifications - himself it is clear that there was really no application of mind to the subject at all. The exercise of the power under Section 6 was obviously colourable. We may add that upon the finding which we have given that the amount of

Rs. 20 lakhs appears to have been first advanced to the Corporation as a loan and then paid to the Special Land Acquisition Officer, the declaration that the land is needed or likely to be needed for a public purpose in the notification under Section 6 would be patently illegal for it would not fulfill the requirement of the proviso to Section 6. It would also indicate a complete non-application of the mind. We shall show a little further when we come to discuss the question raised under Section 17(4) also that there does not appear to have been any application of mind in the promulgation of these notifications.

(83) The proviso to Section 6 has been analysed and pronounced upon in a number of decisions of the highest Court. We have already referred to some of them. Jhandu Lal's case ; Somavanti's case and Valjibhai's case, . We may also refer to the recent decision in February of this year in Civil Appeal No. 177 of 1962 which reiterates the same position Shyam Behari v. State of Madhya Pradesh . In the case last mentioned Mr. Justice Wanchoo observed as follows:-

"Section 6(1) of the Act required that whenever any land is needed for a public purpose or for a company, a declaration shall be made to that effect. Further the proviso to Section 6(1) provides that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority. This clearly contemplates two kinds of declarations. In the first place, a declaration may be made that land is required for a public purpose, in which case in view of the proviso, the compensation to be awarded for the property to be acquired must come wholly or partly out of public revenues or some fund controlled or managed by a local authority. No declaration under Section 6 for acquisition of land for public purpose can be made unless either the whole or part of the compensation for the property to be acquired is to come out of public revenues or some fund controlled or managed by a local authority; . In the second place, the declaration under Section 6 may be made that land is needed for a company in which case the entire compensation has to be paid by the company. 'It is cleat therefore that where the entire compensation is to be paid by a company the notification under Section 6 must contain a declaration that the land is needed for a company. No notification under Section 6 can be made where the entire compensation is to be paid by a company declaring that the acquisition is for a public purpose, for such a declaration requires that either wholly or in part, compensation must come out of public revenues or some fund controlled or managed by a local authority'. " (italicized (here into ' ') is ours).

Upon the findings which we have given, therefore, it is clear that no notification under Section 6 that the land is required for a public purpose could have been made in the instant case, for the entire compensation was to be paid by a Company, the Maharashtra Industrial Development Corporation. The declaration that the acquisition is for a public purpose would be bad, for such a

declaration requires that the compensation must come out of public revenues, either wholly or in part which has been proved. For these reasons, we think that the impugned notifications both under Section 4 and under Section 6 are bad and must be quashed.

(84) Since we have held the notification under Section 6 bad it can hardly be contended that Section 6(3) would come into operation or that such a declaration would be conclusive evidence that the land is needed for a public purpose as stated in the notification. The conclusiveness can only be imparted to a notification which is valid in law. Apart from this we have also held that in declaring that the land was required for a public purpose the Commissioner did not apply his mind to the question at all. If as the Commissioner has stated the proper material was not before him and he was obviously misguided thereby then that error must necessarily be reflected in the making up of his mind as to the existence as the affidavits of other officers and the statement of particulars wish to make out, the Commissioner' s statement that the petitioner's land was to be acquired from the funds of the Maharashtra Industrial Development Corporation was incorrect, then the Commissioner's declaration that there was a public purpose was made upon incorrect premises and without a consideration of the proper material. We must, therefore, hold the action taken by the Commissioner to be a colourable exercise of the power.

(85) In Valjibhai's case, the Supreme Court was faced with a similar acquisition and considering the provisions of Section 6(2) the Supreme Court observed in paragraph 5 of the Judgment at p. 1892 of the AIR Report:

"The notification under Section 6 reiterates this fact and in addition says that the land was needed to be acquired for the purposes of and at the expense of the State Transport Corporation. There is thus a clear declaration of the Government that the purpose of acquisition was a public purpose and as has been consistently held by this Court in a number of cases, including the most recent one, the declaration as to public purpose by the Government is final except where it is a colourable exercise of power".

Since we have held that in the instant case the declaration as to public purpose did amount to a colourable exercise of power, the conclusiveness imparted to the declaration will not be attracted to the present notification under Section 6.

(86) The passage we have quoted from the judgment of Mr. Justice Wanchoo in Civil Appeal No. 177 of 1962: , in the paragraph before the last one, gives rise to the consideration of the other point raised which we have stated as point No.5 arising for decision, in an earlier part of this Judgment. It was contended that the acquisition in the instant case was for the Maharashtra Industrial Development Corporation and was paid for from the funds of the company. We have already shown that Section 6(1) itself makes a distinction between acquisition for a public

purpose and acquisition for a company and that the effect of the proviso to Section 6(1) is that where the acquisition is for a company, no declaration shall be made unless the compensation to be awarded for such property is to be paid by a company. We have already held upon the facts that in the present case the acquisition was for the Maharashtra Industrial Development Corporation and that the compensation for the acquisition was to come from the funds of the Maharashtra Industrial Development Corporation. It has not been disputed before us that the Maharashtra Industrial Development Corporation is a company within the meaning of Section 3(3) of the Land Acquisition Act read with Section 6 itself, that the acquisition of land for a company must be made in accordance with the special provisions made for acquisition of land for companies in Part VII of the Land Acquisition Act. Section 6 opens with the words "Subject to the provisions of Part VII of this Act:. Therefore, the procedure provided after the declaration under Section 6 is made, must be that prescribed by Part VII. It is conceded on all hands that that was not done in the instant case and only the general procedure prescribed for acquisitions for a public purpose was followed. or this reason also the acquisition must be held to be bad in the instant case.

(87) In Valjibhai's case, (sup. cit.) there was also involved an acquisition for a company, viz. the State Transport Corporation of the State. There was of course a contention raised in that case that the State Transport Corporation was a local authority but the Supreme Court negatived it and held that the State Transport Corporation was a company. In the present case, there is no dispute that the Maharashtra Industrial Development Corporation is a company within the meaning of the Act. On the question of the procedure to be followed the Supreme Court held as follows in paragraph 9:

"It is no doubt true that it has been the appellants' case throughout that the State Transport Corporation is a company. It is also a fact that the entire compensation is to come out of the funds of the State Transport Corporation. If, therefore, we accept the contention of the appellants on this point the terms of the proviso will be said to have been satisfied. On the other hand it has been the case of the respondent that the State Transport Corporation is not a company but a local authority. The reason why this contention is raised on behalf of the respondent is that the provisions of Part VII of the Act have not been complied with here and, therefore, if in fact the acquisition is on behalf of a company it will have to be said to be bad on the ground of non-compliance with the provisions of Part VII".

Their Lordships, therefore, accepted the position that if the acquisition is for a company, then the provisions of Part VII must be complied with an non-compliance with that Part would make the acquisition bad. Since it is not in dispute that the Maharashtra Industrial Development Corporation is a company and since we have held that the acquisition was for the Maharashtra

Industrial Development Corporation and the compensation was to come out of the funds of the funds of the Maharashtra Industrial Development Corporation, it must be held that the acquisition in the instant case ought to have been under Part VII of the Land Acquisition Act and, that procedure not having been followed the acquisition is bad. We may add here that a similar argument was advanced on the basis of Chapter VI of the Maharashtra Industrial Development Corporation Act, but as we have pointed out in the earlier part of this Judgment, that Chapter was not brought into force so far as the area in which the lands in dispute are situated. That Chapter does not thus apply.

(88) Then we turn to the remaining objection to the impugned notifications. That objection was to the urgency clause in the notifications. The clause is couched in almost similar language in the notification under Section 4 as well as under Section 6. It says that "whereas the Commissioner, Bombay Division is of the opinion that the lands including the petitioner's land are waste or arable lands and that their acquisition is urgently necessary: the Collector shall on the expiration of fifteen days from the publication of the notice under sub-section (1) of Section 9 of the Act, take possession of all the waste or arable lands specified". The petitioner has stated in paragraph 8(d) that "the urgency clause has been wrongly applied to the petitioner's lands. The petitioner's land is neither waste nor arable land. It is land fit for non-agricultural industrial use and building purposes immediately. The lands have already been surveyed and plans have been prepared for construction thereon long before Notification under Section 4 was issued. The said land is within industrial Area. The said land is not desolate or abandoned land as it is fit ordinarily for use for building purposes. It is also within the Thana Borough Municipal Limits ..... The land which is a building site within the Municipal Limits cannot be regarded as arable land :.

The petitioner also stated in paragraph 3 of the petition that the land was levelled land and was fit for erection of a factory and construction of building. He alleged that the Government of India had asked him to shift his explosive factory and therefore, he had his explosive factory and therefore, he had purchased this site and that Government had approved of his plan for a new factory. The petitioner, therefore, submitted that the opinion of the Commissioner that they were waste or arable lands was clearly not bona fide and was without any application of mind to the facts of the case. The petitioner also submitted that there was no urgency in taking possession of the lands.

(89) Unlike the traverse to the other allegations in the petition, the allegations on this point have only been traversed in the first affidavit of the Commissioner Mr. Patwardhan. In paragraph 13 he stated :

"With reference to ground (d) contained in the said paragraph, I say that the "said lands are agricultural lands' described as such in the Record of Rights. I say that the said lands are being

'assessed to land revenue as agricultural lands'. I say that the said lands are waste or arable lands within the meaning of Section 17 of the Land Acquisition Act I am not aware of and do not admit the allegations that the petitioner's land was fit for immediate use for non-agricultural industrial or building purposes or that the land had been surveyed or that plans had been prepared for construction thereon before the issue of the impugned notification". (italicized (here into ' ') is ours). He also averred in a subsequent passage in the same paragraph "I repeat that I decided to applying (sic) the urgency clause under Section 17 of the said Act to the said lands after I had satisfied my self after fully considering all the facts that the said lands were urgently required for development as an industrial area. I deny the allegation that I formed the said opinion without applying my mind to facts of the case of in that it is not bona fide".

In reply to the allegations in paragraphs e of the petition the Commissioner stated ..... I deny the allegation that the land is levelled or that it is in a fit condition for the erection of a factory or the construction of buildings or that the said land does not require any development to be made for converting it into lands suitable for a factory. I am not aware of and do not admit the correctness of the other statements contained in the said paragraph".

There are all the pleadings on this point.

(90) Now, it has been contended on behalf of the petitioner that these lands of the petitioner were not lands falling within the description of "waste or arable lands" contained in Section 17(1), but that they were lands which were under cultivation or that they were lands for building sites or industrial purposes. So far as the allegation which has been made in paragraph 8(d) of the petition that the lands is a building site within the Thana Borough Municipal Limits is concerned, it appears that there has been no specific denial of that fact in the return filed by the Commissioner. Even the allegation in paragraph 8 (d) of the Petition that the land is fit for non-agricultural and building purposes immediately is not specifically denied. All that the Commissioner says amounts to this "I am not aware of and do not admit these allegations". The denial also does not meet the substance of the allegation in the petition and the substance is that the petitioner's land was fit for non-agricultural, industrial or building purposes and included within the area of the Thana Borough Municipality. What is really denied is that it is so fit for immediate use. The petitioner has placed on record voluminous correspondence with the Inspector of Explosives of the Government of India and a letter to the Director of the petitioner was proposing to shift his existing explosives factory to the site in dispute and after protracted negotiations, the Government of India through its Inspector of Explosives had on 24th January 1963 approved of the plans to shift the factory to this very site. The land is also included within the confines of the Thana Borough Municipality. From all this material it does appear to us that though no doubt the land is still classed as agricultural land in the revenue records of the State

Government building and industrial purposes and earmarked for that purpose. Otherwise it could not have been included within the Borough limits of Thana. It cannot, therefore be called "waste or arable land" by any stretch of the meaning of those words. In considering whether any land is "waste or arable: it is the nature of the land and its substantive use that one must have regard to and not what it is formally dubbed in archaic revenue records.

(91) In Navnitlal v. State of Bombay , a Division Bench of this Court has already held that land which is building site within municipal limits and situated in the developed part of the city cannot be regarded as arable land much less as waste land and that a building site which is quite suitable to be built upon cannot be regarded as waste land simply because it is not put to any present use. It is its unfitness for use and not the mere fact that it is not put to any present use that must determine whether the land is waste or not. On this short ground in the first place the declaration of this land as waste or arable land is liable to be set aside. But we do not propose to rest our decision on this question on this point only.

(92) A further and the larger question has been canvassed very acutely before us. It is whether, assuming that these are agricultural lands as the Commissioner has admitted, they can be said to be "arable lands". The learned Advocate General conceded that they cannot be called waste lands and so the only question which survives is whether the lands of the petitioner can be said to be "arable lands".

(93) But before we do so, we may point out one other thing upon which we think that the notification in this respect suffers from an initial defect. It will be noticed that the learned Commissioner has in forming his opinion merely repeated ipsissima verba the language of Section 17(1) and said that 'the said lands are waste or arable lands". Now a particular piece of land cannot both be waste and arable land. It is either waste land or arable land and since the section permits lands of either category being taken upon the decision as to urgency it seems to us that the authority must indicate which class of land the authority thinks it is going to take under the 'urgency' provisions. To say that the Commissioner is of the opinion that the said lands are waste or arable lands is, in our opinion, not indicative of any decision whatever. It is, on the other hand, an indication that the Commissioner has not applied his mind to the question. The mechanical reproduction of the words of the section that the said lands are waste or arable itself shows, that the Commissioner never applied his mind to the question. We do not say that it necessarily vitiates the notification altogether but that he left the question open to doubt is itself an important indication of the non-application of mind. In Navnitla's case, to which we have referred above, the Commissioner was wiser. He omitted all reference to waste or arable lands and the Division Bench held that the notification was bad for the reason that the authority had not applied its mind before forming the opinion. At p. 628 (of Bom LR) : (at p. 93 of AIR), the

Division Bench observed :

"The affidavit does not state that the Government had formed the opinion that the provisions of Section 17(1) were applicable to the land in the present case nor does it state facts from which we can conclude that such an opinion was formed by the Government. The affidavit has stated that before issuing the Notification the land was inspected and was found to be waste and arable and having no structure on it ..... Whether the land is waste or arable is an objective fact. Under Section 17(4) Government is required to form an opinion with regard to this objective fact as a preliminary step to the exercise of its power to issue a direction dropping the inquiry under Section 5-A. The Government must form the necessary opinion with regard to this objective fact on considerations of reasons which are relevant to its determination. If the Government forms such opinion, the correctness of the opinion cannot be challenged and the sufficiency of the reasons which on the opinion is based cannot be questioned and the direction issued in pursuance of the opinion cannot be assailed. If, however, the Government has formed no opinion at all or the opinion formed in based on reasons which are not relevant to the determination of the objective fact regarding which the opinion is formed in either of these two cases the direction issued can be successfully challenged as not being in accordance with law".

In our opinion, for the reason which we have stated, it is clear to us that initially the Commissioner formed no opinion at all.

(94) The passage which we have just quoted from Navanital's case, also assists in disposing of another contention on behalf of the State. It has been the argument that the question whether certain lands are waste or arable lands is a matter to be decided in the opinion of the authority concerned and that the courts are precluded from considering on what basis such an opinion was formed. In the first place we may point out that the sub-section itself does not use any expressions such as "in the opinion of the authority" or "to the satisfaction of the authority", so that by its terms the section gives no indication. But Sub-section (1) does say "In case of urgency, whenever the appropriate Government or the Commissioner so directs, any waste or arable land needed for public purposes or for a Company". The Sub-section thus deals with five concepts as follows: (1) the existence of urgency, (2) a direction from the appropriate Government or the Commissioner (3) waste or arable land, (4) need for a public purpose and (5) need for a Company. All these concepts are treated equally by the section and there is no indication that anyone is discretionary or subjective. It seems to us on a plain reading of the section that they are all conditions prescribed for the exercise of the power of jurisdiction of the Collector to take the Citizen's property under those provisions. Upon the non-fulfillment or non-existence of any one of those conditions the exercise of the power must necessarily be interdicted. The conditions going to the root of the jurisdiction must be strictly fulfilled and are not left to the subjective

satisfaction or opinion of the authority concerned. Secondly the passage from Navnitlal's case, which we have quoted is decisive of this question. We may only make one thing clear here. The word 'opinion' is used in Subsection (4) in the clause "In the case of any land to which, in the opinion of the Appropriate Government or the Commissioner the provisions of Sub-section (1) ..... are applicable ..... :" and it was urged on the strength of that word "opinion" thus used that all that is necessary is that the authority must be subjectively of that opinion and that Courts cannot look at the matter objectively and determine whether the conditions exist. The word "opinion" may import only a subjective satisfaction (4) the word "opinion" is used in the context of the duty to see whether Sub-section (1) is applicable to any land and not in the context of whether the conditions of Sub-section (1) are fulfilled or not. Those conditions as held in Navnitlal's case, must be objectively proved.

(95) We then turn to examine whether the petitioner's land was "arable" land. We have already adverted to the return of the Commissioner, In paragraph 13 he has stated that the said lands are "Agricultural Lands" described as such in the Record of Rights. Nevertheless, the Commissioner has reiterated in para. 13 of his affidavit that the said lands are waste or arable lands within the meaning of section 17 of the Land Acquisition Act. Here again, we may see the complete non-application of mind . On the one hand, the Commissioner himself assets that the lands are agricultural lands and also adds that the lands are waste or arable. How agricultural lands could be waste lands it is difficult to see. No doubt, it has been pointed out to us in the argument that in the sale deed filed by the petitioner of the purchase of the land by him it is mentioned that the 7 acres and 32 gunthas as agricultural lands and out of it 2 gunthas as Pot-kharaba, that is to say waste land, and that, therefore, the opinion of the Commissioner is justified. In the first place, the notification does not disclose this fact that the words "waste or arable lands" were used because of the two gunthas as Pot-Kharaba nor is that, the explanation given even in the affidavit filed by the Commissioner. It seems that he was completely unware of this fact until and the fact was noticed by counsel on behalf of the respondents. Apart from this the Commissioner's return obviously seems to equate agricultural lands with arable lands leaving out the question of waste land, which may apply to the two gunthas of land which is also in doubt. The principal point which arises, therefore, upon the provisions of Section 17(1) is whether agricultural land can be said to be arable land within the meaning of Sub-section (1) of Section 17.

(96) Upon this question, it has been pointed out that there are two decision of this Court, one reported in Jairam Balaji Anikar v. State of Maharashtra Special Civil Appln. No. 25 of 1962 D/- 26-9-1962 (Bom) and the other in Sadashiv Lahanu v. State of Maharashtra, Special Civil Appln. No. 93 of 1962 D/- 9-11-1962 (Bom). In the first of these cases, the Division in Navnitlal's case and with reference to the question whether agricultural land can be arable land, they observed as follows:-

"The Commissioner has issued this Notification stating in the notification that in his opinion the land is arable land. We cannot accept the contention that the words "arable land" would include land which is under cultivation either of agricultural crops or fruit-bearing trees from which income is derived by the land owner. It seems more consonant with the scheme of Section 17 that it is only that land which is actually waste or which is arable that is, which is culturable but which is not under crops or not being put of use for raising income to which are provisions of the urgency clause can be made applicable, so that nobody who is in possession and enjoyment of the land and raises crops or fruits by way of income is put to loss. It is unlikely that the Legislature could have intended that the urgency clause should be made applicable to lands which are under crops or on which fruit beating trees are standing".

This decision was followed in the subsequent case to which one of us (Kotval J.) was a party. In that decision also it was held that "arable land as the expression is used in Section 17 Subsection (1), cannot include land which is under cultivation either or agricultural crops or fruit-bearing trees from which income is derived by the land owner". Reference was also made to the meaning of the Word "Arable" as given in the Oxford English Dictionary, Vol. I, page 423 as capable of being ploughed, fit for tillage". It was also pointed out that the provisions of Section 17 (1) were, it appears, deliberately made applicable by the Legislature only to waste or arable lands and not to cultivated lands for obvious reasons. These decisions are binding upon us unless we take the view that they were wrongly decided in which case we would be bound to refer the point to a larger Bench.

(97) In the face of these judgments, the learned Advocate General could only contend that these decisions are incorrect. It was urged that the decision in these two Special Civil Applns. No.25 and 93 of 1962 (Bom) were given without a consideration of the definition of "arable land" contained in section 3(aa) and without looking at the provisions of Subsection (3) of Section 17. The new definition in Section 3(aa) was introduced into the Land Acquisition Act by a local amendment by Section 2 of the Land Acquisition (Bombay Amendment) Act XXVII of 1950. It is contended that that definition did not apply to the Vidarbha area from which the two cases cited above arose and that, therefore, the Division Benches had no occasion to consider the effect of that amendment and if the new amendment thus added is taken into account, the decision would be different. It was also pointed out that some of the dictionaries give a wider meaning to the word "arable". Thus substantially three reasons have been advanced why the decisions in those two Special Civil Applications should not govern the present case. The first is that Subsection (1) of Section 17 has not been correctly constructed for the reason that Sub-section (3) of Section 17 was not noticed in any of those decisions; secondly, that in the Special Civil Appln. No. 93 of 1962 (Bom) the meaning of the word "arable" as given in the Oxford Dictionary was followed, but that there are other Dictionaries which give an extension of the

meaning as including land which is cultivated; thirdly, that the definition of "arable land" in Section 3(aa) of the Land Acquisition Act makes a crucial difference. We would deal with each one of these submissions separately.

(98) Section 17 runs as follows:-

"Special powers in cases of urgency:

(1) In cases of urgency, whenever the (Appropriate) Government or the Commissioner so directs, the Collector, though no such award directs, the Collector, though no such award has been made may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the (Government)free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river side or ghat station or of providing convenient connection with or access to any such station (or whenever owing to a like emergency or owing to breaches or other unforeseen events, causing damage to roads, rivers, channels or tanks, it becomes necessary for the State Government to acquire the immediate possession of any land for the purpose of maintaining road communication or irrigation or water supply service as the case may be) the Collector may, immediately after the publication of the notice mentioned in Sub-section (1) and with the previous sanction of the (Appropriate) Government or the Commissioner enter upon and take possession of such land, which shall thereupon vest absolutely in the (Government) free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this Sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding Sub-section the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24; in case such offer is not accepted the value of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(4) In the case of any land to which, in "the opinion of the (Appropriate) Government, or the Commissioner, the provisions of Sub-section (1) or Sub-section (2) are applicable, the (Appropriate) Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4, Sub-section (1)".

Sub-section (1) of section 17 deals with the question of taking a possession of any waste or arable land needed for public purposes or for a company and we have already indicated the conditions for the exercise of the power to take those lands. Sub-section (2) refers to any sudden change in the channel of any navigable river and/or other unforeseen emergency and is a power reserved to the authorities only where possession of any land becomes necessary for a railway administration. Sub-section (2), however, uses the words "any land" in contra-distinction with Sub-section (1) where the words are "any waste or arable land" Sub-section (2) is thus not confined merely to waste or arable land as Sub-section (1) is. We are not concerned with the other requirements of Sub-section (2). It is upon the words of Sub-section (3) that emphasis is laid by the learned Advocate General. He says that the key word in this section in the word "either" preceding the words "of the preceding Sub-sections" that is to say, it means "either of the Sub-section (1) or (2) and so reading it, it is impossible to apply Sub-section (3) unless we read into the word "arable" in Sub-section (1) the meaning that it includes cultivated lands also. It is urged that otherwise the subsequent words of Sub-section (3) "offer to the persons interested compensation for the standing crops and trees (if any) on such land ..... " would be rendered nugatory. The argument is that between Sub-section (1) and (2) there are contemplated three categories of lands, waste land, arable land and any land and then Sub-section (3) says that in every case under either of the preceding Sub-Sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees if any, Obviously, then, if arable land does not include cultivated land, then the words "crops and trees" could not apply, certainly not the word "crop" and, therefore, Sub-section (3) indicates that implicit in the meaning of the word "arable" is included cultivated land.

(99) We are unable to accept this contention, because in the first place the word "either in the opening clause of Sub-section (3) does not necessarily carry the meaning "both" as the Advocate General contends. The word "either" is used to mean "both" or "any one of two". In this case it is clear that is qualifies the words "preceding Sub-section". The expression is "in every case under either of the preceding Sub-sections" So used it is clear that it is used as an adjective and according to the Oxford Dictionary its meaning is "each of the two". In Middle English its sense is indicated as "one or other of the two". It may also be used in the plural when it may imply both, but the Oxford Dictionary indicates that that sense is very rarely used. These senses are explained by a number of illustrations and one of the illustrations given is from one Chesterton's

letters as follows: "When the sun shines on either side of us (as it does mornings and evenings) the shadows are very long". Another example given is "The artificial thunder, in the hands of either nation, must have turned the fortune of the day". The word "either" in the expression "either of the preceding sub-sections" thus means "each of the two preceding Sub-sections". So used it cannot possible imply "both the sub-sections". What is more, the words are preceded by the words "In every case" which again emphasises that the sub-section deals with each individual case separately arising under each of the two sub-sections. We do not think that in the context in which it is used the word "either" implies "both" the preceding sub-sections, but what it means is "In every case under either Sub-section (1) of Sub-section (2)". or in other words "each of the two sub-sections". Moreover, we shall presently show that nothing turns upon the meaning of the word "either" and that the key words of the sub-section are the words, "if any" in the brackets and if one the carefully considers why those words were at all put in, in the section the construction sought to be put upon the word "either" by the learned Advocate General must fail.

(100) An analysis of the possible cases which may arise under Sub-sections (1) and (2) of Section 17, will make the matter further clear, In Sub-section (1) the words used are "waste or arable land" and in Sub-s. (2) "any land", In Sub-section (3) compensation is to be given for the standing crops and trees (if any). Now it is clear that crops and trees cannot possible exist in both cases of waste land and of arable land. In arable land there may be crops and trees and those trees may be of two kinds, growing spontaneously or cultivated by the hand of man, but in waste land there can only be at the most wild trees of spontaneous growth, but there never can be crops in waste land. The draftsman of the section realized that the words "crops" in Sub-section (3) must be meaningless so far as Sub-section (1) is arable land. It would have meaning so far as "any land" in Sub-section (2) is concerned. It is quite clear that Sub-section (3) is not limited to Sub-section (1) : Sub-section (2) as we have pointed out, is concerned with any land which may include even cultivated land or a garden or a pasture or a building land and in such a case it may be that that land may contain crops or trees both wild and cultivated. Therefore, the words "crops and trees" can always apply to Sub-section (2), but the word "crops" it appears cannot apply to Sub-section (1) but the word "trees" would apply in a certain measure to Sub-section (1) for trees of spontaneous growth may be found in both waste and arable land. The draftsman of Sub-section (3) envisaged all these various possible cases arising under Sub-sections (1) and (2) and since he was making a composite provision for both the Sub-sections he first used the words "for the standing crops and trees" and realising that some part of that expression may not be applicable to the case arising under either Sub-section be added the words in brackets "(if any)". It seems that these are the key words to the section, and furnish the real clue to the interpretation of the Section.

(101) The very fact that the draftsman of this piece of legislation used the words '(If any)" in

brackets indicates that he thought that there would arise a conceivable case under Sub-section (1) or Sub-section (2) where the words "standing crops or trees" would not apply or neither of them would apply as in the case of a completely barren piece of waste land. Therefore, since he was required to make a compendious provision covering all the possible cases in Sub-section (1) and (2), he used a composite expression "standing crops and trees" and added the words into brackets "(if any)". He thereby intended to convey "You must in every case pay compensation for standing crops or trees. If in any one of cases arising under Sub-sections (1) and (2) there are or can be no crops then pay compensation only for the trees. If on the other hand in any of the cases arising under Sub-section (1) and (2) there are no standing crops and no trees then compensation need not be paid". That, in our opinion, is the only sense we can make out of the provisions of Sub-section (3). The draftsman had to put these separate ideas into one compact sentence. He realized that under Sub-sections (1) and (2) there were bound to arise a variety of cases There would be trees only and no crops: or crops only and no trees: or neither trees nor crops: He wanted to include every variety into one sentence and therefore he said "standing crops or trees (if any)."

(102) Were we to hold that the words "standing crops and trees" would apply to both Sub-sections (1) and (2) in their entirety, then in the first place, we would be rendering the words "(if any)" meaningless and of no effect and in the second place, we would be so construing the words as to give rise to an impossibility. For instance, in waste land there never can be standing crops, yet we would be so constructing the Sub-section that the words "standing crops" would apply even to waste lands, it is in precisely such a case that the words "(if any)" would come into operation. On the other hand in waste land there may be wild trees of spontaneous growth standing, in which case the words "(if any)" would come into operation so far as the standing crops and cultivated trees and concerned. Similarly in the case of arable lands, there can be no standing crops and may be no trees whatsoever and therefore, the words "(if any)" would come in operation. It is not necessary, therefore, to import by virtue of Sub-section (3) that meaning into "arable land" in Sub-section (1) which would include standing crops in arable land. We do not, therefore, think that Sub-section (3) in any way compels us to give to the meaning of the word "arable" any special connotation other than its normal connotation and that takes us to a consideration of what is the normal connotation of the word "arable" in the English language.

(103) In the second of the two judgments, which we have cited above in Special Civil Appln. No. 93 of 1962 (Bom) the Division Bench had occasion to refer to the meaning of the word as given in the Oxford Dictionary which is to be found in Vol. 1 at page 423. The meaning given is "capable of being ploughed; fit for tillage; opposed to pasture or woodland" and the illustrations there given are from Coke On Littleton, "If the tenant convert arable land into wood"; or from Rogers Agriculture and Prices "half the arable estate, as a rule, lay in fallow". Thus the words

used to indicate land which is capable of being ploughed or fit for tillage and in opposition to pasture land, that is to say grazing land, as it is called in this country or woodland or forests and fallow land. Indeed, if one considers the origin of the word as given in the Oxford Dictionary, it comes from the "Littre arabilis, French arare comes to plough" and the word "arable" is the present pronounciation of what was in the early English the correct word "erable" or in the 16th century "errable, earable, aerable".

(104) What is more significant however, is what the Oxford Dictionary omits to mention. It does not mention any other sense in which the word "arable" could possible be understood. Webster in his Dictionary shows a somewhat extended meaning and it is that meaning upon which strong reliance was placed on behalf of the respondents. Webster also mentions the same meaning as in the Oxford Dictionary to begin with "capable of being ploughed; fit for tillage and crop production (with reference to land)", but then he gives the extended meaning as follows: "Brit: engaged in or involving the production of cultivated crops (farming); Brit, of crops: requiring cultivation; esp. seeded and grown annually rather that, from the regrowth of an established sod; 2. Brit, of live-stock; fed on cultivated crops (as roots) (the arable ewe going back on to the rough grazing (S. J. Watson)". As a noun the meaning given is "land that is tilled or tillable". Thus even Webster makes a distinction between the adjectival use of the word "arable" and the noun "arable". It seems that the adjective has now begun to be used in Britain as a noun and so used, it is used indiscriminately for both "tilled and tillable" lands. The meaning, however, it is clear is of comparatively recent growth and it is not of universal use. In Britain it is used in a peculiar connotation, but its basic meaning still remains the same "fit for tillage and crop production or capable of being ploughed". It may be pointed out that this meaning is the same as occurs in 1902 edition of Webster's Dictionary and also in the Imperial Dictionary of 1882 where also the meaning is given "fit for ploughing or tillage; arable land, land which is cheaply cultivated by means of plough" as distinct from pasture land.

(105) There is a clear conflict as to the extended meaning in the several dictionaries. One thing is at least clear that the original and basic meaning of the word "arable" was "fit for ploughing or tillage or capable of being ploughed". As to the extended meaning we would prefer to rely upon the Oxford Dictionary which is a work of great renown and a standard work on the meanings of words in the English language, and in that great work the extended meaning does not find place.

(106) But though with the aid of Counsel we have gone into this research as to the meaning of the word "arable" we think that the matter before us can be decided upon the judicial construction of the word and the meaning given to it in early English decisions. Where dictionaries differ, a judicial interpretation of the word even in a "Persuasive" precedent would be of prime importance. In Palmer v. M' Cormick, (1890) 25 Ir 110 Mr. Justice Chatterton expressed the

meaning thus at p. 119.

"Arable" does not mean land actually ploughed up or in tillage, but land capable or fit to be so; and for aught I know this land, though properly designated arable in 1821, may even then have been in process of acquiring the character of ancient pasture, which process may have commenced, and been going on for some time".

(107) The learned Vice Chancellor, therefore, clearly and definitely says that "arable" land does not mean land actually ploughed up or in tillage. In our opinion, that interpretation by a Judge whose understanding of the word we would prefer more than any dictionary should settle the issue. There is also a passage in the Judgment of Tindal C. J. in Simmons v. Norton, (1831) u Bing, 640, where the meaning of the word was not directly adverted to but discussion serves to illuminate that meaning:-

"Ploughing meadow land is also esteemed waste on another account namely, that in ancient meadow, years, perhaps ages, must elapse before the sod can be restored to the state in which it was before ploughing. The law therefore considers the conversion of pasture into arable as prima facie injurious to the landlord. On those two grounds at least"

(108) Here, again the learned judge uses the word "arable" as ploughable land, In the same case Mr. Justice Fitz Gibbon at page 126 has used the words:

" ..... because it was not in grass for twenty years before the lease, and therefore by its omission from the suit and injunction, may be taken as arable land cultivable by the Defendant at his discretion, but subject always to the husbandry covenants which secure all the lands against real 'waste" "

This decision was given in 1890 and nowhere was it suggested that "arable" meant land which is already cultivated or on which crops were grown. On the other hand, we have shown that Vice-Chancellor Chatterton has Definitely said that the word "arable" does not imply cultivated land. We can see, therefore, no reason why the decision in the two cases should not be followed. There appears to be no doubt as to the meaning of the word "arable", not is there any indication in Sub-section (3) or any other provision of Section 17 to indicate that the word "arable" has a special connotation and includes cultivated lands as well. Upon the citation of Webster's and other dictionaries wherein the extension of meaning has been shown, we suggested to the learned Advocate General at an early stage of the arguments on this point that if there was any doubt, we were prepared to refer this case to a larger Bench, but the learned Advocate General felt that that ought not to be done as it would delay the decision of this case. On fuller arguments we see no reason to doubt the earlier view taken in this Court.

(109) Then we turn to the third contention as to whether the new definition added by local amendment makes any difference to the Interpretation of the word "arable" in Sub-section (1) of Section 17. By the Amendment Act XXVII of 1950 a local amendment has been incorporated in Section 3 and in the definition clause the following clause has been added :-

"The expression "arable land" includes garden land".

This definition of course did not come up for consideration before the two Division Benches which decided the earlier cases because that definition was not operative in the area in definition was not operative in the area in which those cases arose. The definition is only an inclusive definition and something which is included by an express statute may or may not be implicit in the original meaning. In our opinion, the inclusion of "garden land" in arable land is an artificial extension of the meaning of the expression "arable land" which the Legislature was always entitled to give. The inclusive definition would further emphasise the connotation which we have preferred, because the definition includes "garden land" in "arable" land which otherwise would not have been normally included. The expression "garden land" moreover is a peculiar expression is, so to say a technical expression borrowed from local legislation. For instance, a reference to "garden land" is to be found in Section 117 C (6) of the Bombay Land Revenue Code where "Class of land" is defined as meaning "any of the following classes of land, namely, dry crop, rice or garden land". It seems to us that it was an expression conveniently coined as an English equivalent to the well recognised classification in the Hindi language of "Bagayat land". Reference to this shade of meaning may be found in Gupte's Land Revenue Code, 5th Edition at page 683. We do not think, therefore, that the extension of the meaning of the words "arable land" given in the definition now incorporated in Section (3) of the Land Acquisition Act by the local amendment assists in the determination of or alters, the true meaning of the expression "arable land" as used in S. 17(1), except that by artificial extension it now includes Bagayat land.

(110) Reference was then made to a passage in the decision we have already referred to in Navnitlal's case. Mr. Justice Desai in discussing the affidavit put in but the Commissioner in that case observed as follows:

"From the affidavit in reply filed by the Commissioner, it does appear that the only ground on which the Commissioner has regarded the land as waste and arable is that it was not put to any present use and had no structure standing on it. An arable land is a land which is fit for tillage 'and the expression is usually used to mean lands which are ploughed for raising ordinary annual crops such as rice, jowar etc. ' " (italicized (here into ' ') is ours). The learned Advocate General relied upon the words single quoted in this quotation to urge words single quoted in this quotation to urge that the words "arable land" have been judicially interpreted by that Division Bench to include cultivated land. From a perusal of the judgment it is quite clear that learned

judge was not attempting to define the expression at all. He was referring to what the Commissioner in that case had regarded as waste and arable land and in that context be referred to the meaning of "arable land" as land which is fit for tillage and further observed that the expression is usually used to mean lands which are ploughed for raising ordinary annual crops such as rice, jowar, etc. With respect we may point out that there is no authority referred to and no reasoning and it is clear that the remark was wholly obiter and that was also conceded by the learned Advocate General.

(111) Having regard to the correct meaning of the word " arable" we do not think the petitioner's lands in the present case were arable lands. That they were not waste lands is not disputed. On the interpretation which we have given to the word "arable" and upon the statement of the Commissioner himself that these are agricultural lands, therefore, it must be held that the petitioner's lands could not be taken under Section 17(1). It seems to us that the law in its wisdom deliberately excluded cultivated land from being thus taken under the urgency provisions. The intention of the law is clear, as indicated in the judgment in Special Civil Appln No. 93 of 1962 (Bom) that where a person has expended time, money and labour in tilling the soil and in cultivating crops, the land should not be taken except under the normal procedure of the Land Acquisition Act. That interpretation which is consonant with the normal meaning of the words used is an interpretation which, in our opinion is also just.

(112) Some reference was made in the arguments before us to a decision of another Division Bench of this Court in Special Civil Appln. No. 1556 of 1962 to which decision my learned brother was a party. A perusal of the penultimate paragraph of that judgment unmistakably shows that so far this point was concerned it was decided on a concession. It is categorically stated in the judgment itself that the learned counsel "does not seriously dispute that although they (the lands in that case) are in the City of Poona and have been included in the Town Planning Scheme, they are in fact put to use for agricultural purposes". Of course, the point was never argued before the lands and were being put to agricultural purposes and the attention of the Division Bench was not invited to the point which has been so seriously agitated before us. We cannot regard that decision as a decision contrary to the view which has already been taken by the view which has already been taken by this Court and with which we are in agreement.

(113) In connection with the point, which we have just decided, another ancillary question was raised by the learned Advocate General. He urged that even assuming that we take the view that the lands of the petitioner were not arable lands and could not be taken under Section 17(1), all the notifications issued in this case ought not to be held bad, but only those notifications which were issued from the point where the authorities went wrong. The effect of holding that section 17(1) did not apply to the petitioner's lands would be that Section 5-A would not be excluded and

therefore the petitioner would be entitled to urge and be heard upon any objections to the acquisition which he may choose to take. It was urged that, therefore, the notification under Section 6 and the subsequent notification under Section 9 should alone be held, bad but not the notification under Section 4. On behalf of the petitioner, however, Mr. Bhatt contended that section 4 is so inextricably inter-mingled with the other provisions of the Act that we cannot set aside only the notifications under Sections 6 and 9. He pointed out that under Sections 6 and 9. He pointed out that under Section 5-A he was entitled to show by taking objections, that the land was really not needed for a public purpose at all or that other land was available, or that only a part of the land ought to be taken, in which case even the notification under Section 4 would have to be held bad and unnecessary. He also relied upon the decision in Navnitlal's case where the Division Bench set aside all the notifications although they held that the notification under Section 17(1) was bad. In the view we have taken upon other points, we do not feel called upon to decide this question regarding the severability of the proceedings. Moreover we have in this case also held that the notification under Section 4 is bad for other reasons. In that view it is unnecessary to decide whether the principle of severability applies here.

(114) In the result, we allow the petition and quash the notifications issued by the first respondent under Section 4 and 6 of the Land Acquisition Act. We also quash the notifications so far as Section 17 has been applied in this case and hold that the possession of the petitioner's land taken under those notifications under Section 17 was illegal and must be restored to the petitioner. The respondents will pay the costs of the petitioner. The order restoring possession is at the request of Mr. Setalvad for the State stayed upto 1st October 1964.

(115) Petition allowed.