

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5509 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (C) NO. 2239 OF 2006

Sooraram Pratap Reddy & Ors. ... Appellants

Versus

District Collector,
Ranga Reddy Distt. & Ors. ... Respondents

WITH

CIVIL APPEAL NO. 5510 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (C) NO. 1135 OF 2006

SURARAM KRISHNA REDDY & ANR. ... APPELLANTS

VERSUS

DISTT. COLLECTOR,
RANGAREDDY DISTT. & ORS. ... RESPONDENTS

CIVIL APPEAL NO. 5511 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (C) NO. 3387 OF 2006

V. KRISHNA PRASAD ... APPELLANT

VERSUS

DISTT. COLLECTOR,
LAND ACQUISITION & ORS. ... RESPONDENTS

CIVIL APPEAL NO. 5512 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (C) NO. 2902 OF 2006

A.L. SADANAND ... APPELLANT

VERSUS

GOVT. OF A.P. & ORS. ... RESPONDENTS

CIVIL APPEAL NO. 5513 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (C) NO. 3388 OF 2006

MALLA REDDY & ORS. ... APPELLANTS

VERSUS

GOVT. OF A.P. & ORS. ... RESPONDENTS

CIVIL APPEAL NO. 5514 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (C) NO. 3389 OF 2006

BANDARI PENTAIHAH & ORS. ... APPELLANTS

VERSUS

GOVT. OF A.P. & ORS. ... RESPONDENTS

CIVIL APPEAL NO. 5515 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (C) NO. 3390 OF 2006

BANDARU PENTAIHAH & ORS. ... APPELLANTS

VERSUS

DISTRICT COLLECTOR & ORS. ... RESPONDENTS

J U D G M E N T

C.K. THAKKER, J.

1. Leave granted.

2. All these appeals are filed by the appellants being aggrieved and dissatisfied with the judgment and order passed by the High Court of Andhra Pradesh in various Letters Patent Appeals as also in Writ Petitions. By the said orders, the High Court rejected the prayer of the appellants for quashing proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') for acquisition of land being illegal, unlawful, mala fide and in colourable exercise of power by the State.

Factual background

3. To appreciate the controversy in the present appeals, it is appropriate to refer to the facts in the first matter i.e. Civil Appeal arising out of SLP(C) No. 2239 of 2006 (*Sooraram Pratap Reddy & Ors. v. Deputy*

Collector, Ranga Reddy & Ors.). It was the case of the appellants before the High Court that the Government of Andhra Pradesh sought to acquire a large chunk of land in the name of 'public purpose' for the purported development of 'Financial District and Allied Projects'. According to the appellants, the action has been taken in colourable exercise of power and in total violation of the Land Acquisition Act, 1894 as well as several other statutes in force in the State of Andhra Pradesh; such as, Andhra Pradesh Urban Area Development Act, 1975; Zoning Regulations; Environment (Protection) Act, 1986; Water (Prevention and Control of Pollution) Act, 1974 etc. The action has been taken, alleged the appellants, with mala fide intention and oblique motive to transfer valuable land of small farmers to a foreign company and few selected persons with vested interest.

4. A notification under Section 4 of the Act was published in the State Government

Gazette on July 17, 2002. The said action was challenged and the validity of notification was questioned in a writ petition in the High Court of Andhra Pradesh. The High Court dismissed the petition following an earlier decision in Writ Petition No. 21712 of 2002 by observing that the writ petition involved similar issues. The High Court, however, directed that 'urgency clause' sought to be invoked by the Government under Section 17 of the Act was illegal, unlawful and unwarranted. That part of the notification was, therefore, set aside and the Authorities were directed to proceed to hear objections of the owners/interested persons by following procedure under Section 5A of the Act. According to the appellants, the High Court was wholly wrong in dismissing the writ petition relying on the judgment in Writ Petition No. 21712 of 2002 since in that case, the Court has considered only one issue; viz. the acquisition was or was not for public purpose as the beneficiary was Andhra Pradesh

Industrial Infrastructure Corporation Limited ('APIIC' for short). Really, the property has been given in bounty to a foreign Company which was not lawful. The High Court failed to consider and decide several important and crucial issues raised by the small landowners.

5. Being aggrieved by the order passed in the writ petition, the appellants preferred Writ Appeal which was also dismissed. The appellants have, therefore, approached this Court by filing the present appeal. Initially, notice was issued. Several matters raising similar issues were also filed and all were ordered to be placed for hearing together.

6. We have heard learned counsel for the parties.

Submissions of appellants

7. The learned counsel for the appellants contended that the High Court was wholly wrong in dismissing writ-petitions as also writ appeals. According to the appellants, land

acquisition proceedings were clearly unlawful, illegal, mala fide and violative of the fundamental rights of the appellants. They were taken in colourable exercise of power by the authorities. The appellants are small landholders and their only livelihood was dependant on land attempted to be acquired by the respondents. According to the appellants, there was no 'public purpose' as defined in the Act and the land is acquired for a private foreign company. The acquisition was, therefore, bad in law and for a collateral purpose. It was also submitted that even if it is assumed for the sake of argument that the land could be acquired for a public purpose by a private Company, the procedure for acquisition of land by a private company under Part VII of the Act ought to have been followed and not the procedure under Part II providing for acquisition of land by the State Authorities. It was urged that in the era of globalization, if a foreign company wanted to

establish its business, it was required to follow the prescribed procedure and parties must be left to settle their deal by entering into mutual agreement for sale and purchase of properties. In other words, according to the appellants, power of '*eminent domain*' has no application to such cases. The provisions of the Act must be strictly construed and judicial scrutiny in such matters *i.e.* in the matters of acquisition of land by the State or its instrumentality for a private party, namely, for use and occupation of land by a foreign company should be very strict. It was further submitted that proceedings were totally mala fide which was clear from the fact that huge land owned and possessed by influential persons such as, Smt. Vijay Nirmala, a well-known actress and other persons in public life had been excluded. Thus, rich landlords and politically patronage persons have been excluded from acquisition of land and appellants and other persons who were small or

marginal farmers earning their bread were deprived of their property. Malicious action on the part of the State Authorities was also clear from the fact that though the land was sought to be acquired for industrial policy of the Government, initially, 'urgency clause' was applied and Section 17 was pressed in service. It was because of the High Court's intervention that urgency clause was quashed and authorities were directed to take action in accordance with law and only thereafter notices were issued and procedure under Section 5A of the Act was followed. On all these grounds, it was submitted that proceedings are liable to be quashed.

Submissions of respondents

8. The learned counsel for the respondents, on the other hand, supported the orders passed by the High Courts. They submitted that the land was acquired under the Act for 'public purpose' after following

procedure laid down in the Act and the acquisition was legal, lawful and in consonance with law and no interference is called for by this Court under Article 136 of the Constitution.

9. Affidavits were filed by the contesting respondents. So far as the State Authorities are concerned, a counter-affidavit was filed by Special Deputy Collector, Land Acquisition (Industries), Hyderabad. In the said affidavit, it was, *inter alia*, contended that appellants were not small land-holders or marginal farmers. Most of them have converted agricultural lands unauthorizedly into housing plots and sold them to various builders/developers/property dealers/estate agents and they were not cultivating the land. No doubt, there were certain small land-owners/farmers also. But, it was contended by the State, that because of industrial policy of the State Government, a decision was taken to construct 'Information Technology Park', under the

Information Technology and Hardware Industrial Policy 2005-10 and for the said purpose land was sought to be acquired under the provisions of the Act. Proceedings were, therefore, initiated and necessary notification was issued. There was no illegality in the procedure contemplated under the Act for acquisition of land. APIIC is an instrumentality of State which was to pay the entire amount of compensation and such action could not be said to be illegal or contrary to law. It was, therefore, submitted that the appeals are liable to be dismissed.

10. APIIC in its affidavit filed by the General Manager (Law), contended that it was wholly owned undertaking of the Government of State of Andhra Pradesh and has been developing infrastructural projects in the State to facilitate socio-economic progress. According to the deponent, large extent of Government land in various villages of Ranga Reddy District in the periphery of Hyderabad were

handed over to the Corporation for the development of special projects like Software Lay Out, Indian School of Business, Indian Institute of Information Technology, Hitech City, National Games Village, Sports Stadia, Integrated International Convention Centre, Golf Course, Financial District, etc. Some of the projects have already taken shape and others are in various stages of development. It was submitted that time was a critical factor for implementation of those projects. In view of development of these special projects, the respondent-Corporation would be improving facilities in the round-about areas. It was for fulfillment of this industrial policy and completion of several projects that notifications under the Act were issued by the State. The High Court was satisfied about public purpose and hence rejected the ground put forward by land-owners that acquisition was not for public purpose. According to the High Court, however, the procedure laid down in the

Act was required to be followed by issuing notices under Section 5A and urgency clause under Section 17 of the Act could not have been invoked. In several cases, awards were made and possession of the land was also taken over. In some other cases, award is not passed and the land is still in the possession of the land-owners. That, however, does not mean that proceedings under the Act were illegal or unlawful.

11. According to APIIC, the Government of Andhra Pradesh introduced Tourism Department which established a transparent framework of enabling private sector and tourism sector in the State. The State had undertaken such projects under the name and style of "Establishment of Hyderabad as a Business-cum-Liaison Destination" with a goal of transforming into world class business destination, to be the leader in knowledge sector. Pursuant to such project, Integrated Convention Centre Complex (ICCC) is being

developed by the State Government on the basis of "Public Private Partnership" (PPP) format. Under the said project, International Convention Centre and business hotel adjoining Hi-tech Business Centre were already established. Similarly, International Golf Champion Course with multiuse development was sought to be set up.

12. The Government of Andhra Pradesh designated APIIC as Nodal Agency for development of Integrated Project. Emaar Properties, PJSC, Dubai was selected in international competitive bidding for implementation of the project. The Government issued orders approving structure and implementation of the project. A collaboration agreement was entered into between APIIC and Emaar Properties, Dubai to implement the project. APIIC was having 26% share while Emaar Properties is having 74% share capital. Joint Venture companies were incorporated with the Registrar of Companies, Andhra Pradesh,

Hyderabad with registered office at Hyderabad for taking different components of integrated project. Several projects are about to be over. Some projects are going on and some are to be undertaken. Total cost according to APIIC excluding operating and financial course of the integrated project is more than Rs.550 crores. It was submitted that considering the project in its entirety, the High Court was wholly right and fully justified in dismissing the petition and not interfering with the land acquisition proceedings.

13. Emaar had also filed an affidavit through General Manager, denying allegations and controverting averments made by the writ-petitioners contending that the petitions are misconceived and ill-founded and the petitioners were not entitled to any relief. It was stated that the Special Deputy Collector, Land Acquisition in its affidavit has rightly stated that land-owners were not small farmers, small owners/marginal farmers

but they have illegally converted agricultural land into non-agricultural land and have sold/ transferred/ allotted to builders/ developers/ real estate owners of properties. Acquisition was for industrial policy of State and APIIC was the Nodal Agency which was an 'instrumentality' of the 'State'. The amount of compensation was to be paid by APIIC and acquisition was under power of 'eminent domain'. Acquisition is not for foreign company or private party and the High Court was right in not insisting for following procedure laid down in Part VII of the Act as the case is covered by procedure prescribed in Part II of the Act. Public purpose was precise, perfect and lawful and the land was acquired in consonance with the procedure laid down in the Act. It was only with a view to delay the proceedings that petitions were filed by the petitioners which has resulted in gross injustice to Emaar which has made large investments.

14. According to Emaar, the City of Hyderabad was sought to be transformed into Business-cum-Liaison Destination as envisaged by the Government and public and private sectors' participation investment had been thought proper through Integrated Project under Industrial Policy of the State 2005-10. Through APIIC, the State undertook the Integrated Project for establishing Hyderabad into world class business destination and a leader in the knowledge sector. Such project would indeed develop the State which would be in the larger interest of general public. It would enhance the value of Hyderabad into a Tourist-cum-Business Destination for domestic as well as international travellers. It was, therefore, submitted that the land acquisition proceedings were in consonance with the law and no case has been made out for interference with such proceedings and the appeals are liable to be dismissed.

Notifications

15. As already noted earlier, proceedings had been initiated by the authorities in 2002. A notification under Section 4 of the Act was issued by the State Government on July 10, 2002 which was published in the Government Gazette on July 17, 2002. The said notification read as under;

THE ANDHRA PRADESH GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

R.R. No. 25	HYDERABAD	WEDNESDAY	17 TH	JULY
2002				
No.G1/7180/2000		Dated	:	10-07-
2002				

FORM - 2 A

DRAFT NOTIFICATION UNDER SECTION 4 OF 1894
AS AMENDED BY ACT XXXVIII OF 1923

Whereas it appears to the Government of Andhra Pradesh that the land specified in the Schedule below and situated at Nanakram Guda Village, Serilingampally Mandal, Ranga Reddy District is needed for Public purpose, to wit for Development of New Projects by APIIC Ltd., notice to that effect as hereby given to all whom it may concern in accordance with the provisions of section 4 (1) of the Land Acquisition Act, 1 of 1894, as amended by the Land Acquisition Amendment made by the Land

Acquisition Act XXXIII of 1923, and the Governor of Andhra Pradesh hereby authorized Spl. Deputy Collector, LA (Ind), Hyderabad, and his staff and workmen to exercise the powers conferred by section 4(2) of the Act. Under sub-section (4) of Section 17 of the Act, the Governor of Andhra Pradesh directs that in view of the urgency of the case, the provisions of Section 5-A of the Act, shall not apply to this case.

SCHEDULE

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16. It is thus clear that the land was proposed to be acquired for a public purpose, viz. for development of new projects by APIIC. It is also apparent that urgency clause under Section 17 of the Act was applied and inquiry under Section 5-A was dispensed with.

17. A notification under Section 6 of the Act was also issued on the same day which was published in the Government Gazette on July 18, 2002. The said notification read as under;

THE ANDHRA PRADESH GAZETTE
EXTRAORDINARY

PUBLISHED BY AUTHORITY

R.R. No. 26	HYDERABAD	Thursday 18 th July 2002
No.G1/7180/2000		Dated : 10-07-2002

FORM - 5-A

DRAFT DECLARATION UNDER SECTION 6 OF THE LA ACT

Under Sec. (6) of the Land Acquisition Act, the Governor of Andhra Pradesh hereby declares that the land specified below and measuring Ac.80-35 gts/acre be the same a little more or less is needed for public purpose, wit for Development of New Projects by APIIC Limited. Under Sections 3 and 7 of the same Act, the Special Deputy Collector, L.A. (Ind.), Hyderabad, is appointed to perform the functions of Collector under the Act and directed to take

Order for the acquisition of the land under Sub-Section (1)(2) of Section 17 of the Act, the Governor of Andhra Pradesh further directs that the possession of the said land may be taken on the expiry of 15 days from the date of the publication of the notice mentioned in section 9(1) of the Act. A plan of the land is kept in the Special Deputy Collector, L.A. (Ind), Hyderabad, and may be inspected at any time during the office hours.

SCHEDULE

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Writ Petitions in High Court

18. The validity of notifications under Sections 4 and 6 of the Act was challenged by some of the land owners by filing Writ Petition No. 21712 of 2002 in the High Court of Andhra Pradesh at Hyderabad. The learned Single Judge, vide a judgment and order dated April 25, 2003 partly allowed the petition. He held that in view of counter-affidavit filed by the authorities, it could not be said that the acquisition was illegal or unlawful and, therefore, was not sustainable. Acquisition of land was in exercise of power of *eminent domain* and was intended for public purpose, to wit, for development of New Projects by APIIC Ltd. The acquisition was to enable the activities of APIIC, which was an instrumentality of State operating in the area of industrial infrastructure. The purposes of APIIC were demonstrably public purposes. It

was also held that the claim of the petitioners as being small farmers was not well-founded as no agricultural operations were being pursued by them as asserted by the authorities in the counter-affidavit which was not denied. The availability of alternative land as pleaded by the petitioners was also not correct since the lands available were not contiguous to the existing developed areas and hence could not be said to be 'alternative'.

19. The Court, however, held that invocation of urgency clause under Section 17 of the Act and dispensing with enquiry as contemplated by Section 5-A of the Act was not legal. Section 5-A of the Act is a salutary provision which enables the persons whose land is proposed to be acquired to urge all grounds that may be available against the proposed acquisition at the enquiry. Unless real urgency is demonstrated, dispensing with the enquiry and invocation of urgency clause was irrational and arbitrary exercise of power by the State.

By such process, an enquiry under Section 5-A of the Act cannot be jettisoned on jejune grounds of irrational and unsubstantiated urgency. Since no such urgency could be demonstrated by the State, the action to the extent of dispensing with the enquiry was held to be bad. The petition was, therefore, partly allowed directing the authorities to issue notice to the landowners under Section 5-A of the Act and to take further proceedings in accordance with law.

20. The Court finally stated;

"However, it is clarified that the notice under section 4(1) of the Act is not interfered with".

21. Other petitions filed by other land owners were also partly allowed relying upon the decision in Writ Petition No. 21712 of 2002.

Writ appeals

22. Being aggrieved by the orders passed by the learned Single Judge, Writ Appeals were

instituted by both landowners as also by APIIC. The Division Bench dismissed all the appeals holding that the land was needed for public purpose and the acquisition could not be said to be contrary to law. Similarly, the learned single Judge was also right in coming to the conclusion that on the facts and in the circumstances of the case, urgency clause could not have been applied under Section 17 of the Act and enquiry could not have been dispensed with under Section 5-A of the Act.

23. The Division Bench stated;

"The Financial District is a unique project being developed by the Corporation wherein the reputed financial institutions like Banks, Insurance etc., set up their offices to serve the needs of the trade, commerce and industry. The Corporation has already allotted land in the Financial District for Insurance Regulatory and Development Authority of India (IRDA) and also to SBH Staff Training Academy etc. It is stated that in order to ensure compactness of the Financial District, the lands in question are under acquisition for public purpose and to utilize them for new projects being developed by the Corporation.

The lands in question were identified and notified for acquisition after examining the matter carefully. The lands in question are essential so as to ensure compactness of the Financial District Project being developed by the Corporation. It is stated that there is no prohibition to acquire lands belonging to small farmers under the due process of law, if it is inevitable. The allegation of the appellants that there are vast extents of Government lands in the nearby villages and that there is absolutely no reason to acquire private patta lands is denied. The Government lands situated in the adjoining villages would not facilitate compactness of the Financial District Project being developed by the Corporation. It is stated that the lands in question are under acquisition following the due process of law for utilizing the same for public purpose, i.e. development of Financial District Project and other projects being development by the Corporation. The development works for the proposed works would be taken up as soon as the lands are acquired under the Land Acquisition Act".

24. In pursuance of the order passed by the learned single Judge and confirmed by the Division Bench of the High Court, enquiry under Section 5-A of the Act had been held. Notices were issued to the land owners and persons

interested, objections were invited, hearing was afforded and finally notification under Section 6 was issued on April 26, 2005 which was published on the next day, i.e. April 27, 2005 in the Government Gazette. The said notification reads thus;

THE ANDHRA PRADESH GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

R.R. No. 85	HYDERABAD	WEDNESDAY 27 th April 2005
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No.G1/7180/2000

Dated : 26-04-

2005

FORM - 5-A

DRAFT DECLARATION UNDER SECTION 6 OF THE LAND
ACQUISITION ACT

Under Sec. (6) of the Land Acquisition Act, the Government of Andhra Pradesh hereby declares that the land specified below in the schedule below and measuring acres (80-35) acres, be the little more or less is needed for public purpose, wit for DEVELOPMENT OF NEW PROJECT by APIIC Limited, under Sections 3 and 7 of the same Act, THE SPECIAL DEPUTY COLLECTOR, LAND ACQUISITION (INDUSTRIES), Hyderabad, is appointed to perform the functions of Collector, under the Act and directed to take order for the acquisition of the said lands. Under sub-section (1) (2) of Section 17 of the Act, the Government of Andhra Pradesh further directs, that the possession of the said lands may be taken on the expiry of (15) days from the date of the publication of the notice mentioned in section 9(1) of the Act, a plan of the land is kept in the office of the SPECIAL DEPUTY

COLLECTOR, Land acquisition (industries), Hyderabad, and may be inspected at any time during the office hours.

NOTICE is hereby given under section 9(1) & 10 and 9(3) & 10 of the Land Acquisition Act, that the State Government proposed to acquire the lands mentioned in the schedule. All persons interested in the lands are requested to appear in person or by authorized agent, before the on SPECIAL DEPUTY COLLECTOR, LAND ACQUISITION (INDUSTRIES), Hyderabad, SNEHA SILVER JUBILEE BHAVAN, Collectorate premises, LAKDIKAPUL, HYDERABAD on 21.05.2005 at 11-00 AM.

SCHEDULE

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25. The said notification thereafter was challenged by the land owners in the High Court of Andhra Pradesh in the present proceedings. As already observed earlier, the petitions were

dismissed and hence the property owners have challenged the said decision in this Court.

Statutory provisions

26. Before we deal with the contentions of the parties, it is appropriate if we examine the relevant provisions of the Land Acquisition Act, 1894. As the Preamble states, the Act has been enacted for the purpose of enabling the State to acquire land for public purposes as also for Companies. Section 3 defines various expressions. The expression 'Company' is defined in clause (e) to mean a Company as defined in the Companies Act, 1956 (other than a Government Company). Clause (ee) defines 'appropriate Government'. Clause (f) defines 'public purpose'. The definition is *inclusive* in nature and includes purposes mentioned in sub-clauses (i) to (viii).

27. Part II (Sections 4 to 17) relates to 'acquisition'. Section 4 confers power on the appropriate Government to issue preliminary

notification for acquisition of land needed or likely to be needed for any public purpose or for a Company. The proceedings for acquisition thus begin with issuance of notification under Section 4 which reads as under;

4. Publication of preliminary notification and powers of officers thereupon—

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

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

to dig or bore in the sub-soil;

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

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

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

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

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

28. Section 5A as inserted by the Land Acquisition (Amendment) Act, 1923 (Act 38 of 1923) provides for hearing of objections. It enacts that any person interested in any land

which has been notified under Section 4 of the Act as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land. Such objections can be made to the Collector in writing. The Collector should grant the objector an opportunity of being heard in person or by any person authorised by him in that behalf or by pleader and should, after hearing all objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Section 4 (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The section also declares that the decision of the

Appropriate Government on the objections shall be 'final'.

29. Section 6 relates to "declaration that land is required for a public purpose". The said section is material and may be quoted *in extenso*.

6. Declaration that land is required for a public purpose.-

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

Provided that no declaration in respect of any particular land covered

by a notification under section 4, sub-section (1),—

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

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

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

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

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

deemed to be compensation paid out of public revenues.

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

(3) ***The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be;*** and, after making such declaration the Appropriate Government may acquire the land in manner hereinafter appearing.

(emphasis supplied)

30. Once the declaration under Section 6 has been made, it shall be conclusive evidence that the land is needed for a public purpose.

31. Section 9 requires the Collector to issue notice to the person interested stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him. It also enumerates particulars to be mentioned in the notice.

32. Section 11 enjoins the Collector to proceed to enquire into the objections (if any) which any person interested had filed pursuant to the notice and the value of the land at the date of the publication of the notification under section 4(1), and to make an award. Section 11A prescribes period within which such award shall be made by the Collector. Section 12 declares award of Collector to be final subject to the provisions of the Act. Section

16 empowers Collector after he has made the award under section 11 to take possession of the land which shall thereupon vest absolutely in the Government, free from all encumbrances. Section 17 deals with cases of urgency.

33. Part III (Sections 18 to 28A) provides for reference to Court and procedure to be followed. Part IV (Sections 29 to 30) deals with apportionment of compensation. Part V (Sections 31 to 34) relates to payment of compensation. Part VI (Sections 35 to 37) permits temporary occupation of land.

34. Part VII (Sections 38 to 44B) is another important part dealing with acquisition of land for Companies. Sections 39 provides for previous consent of appropriate Government and execution of agreement for such acquisition. Section 40 declares that no such consent can be given unless the appropriate Government is satisfied either on the report of the Collector

under Section 5A(2), or upon an enquiry conducted in the manner laid down in Section 40 as to purpose of acquisition. Section 41 provides for agreement between the Company and appropriate Government in respect of the matters specified therein. Section 42 requires publication of agreement in Official Gazette. Section 44A imposes a restriction on the Company for which any land is acquired under Part VII to transfer the land or any part thereof by sale, mortgage, lease, gift or otherwise except with the previous sanction of the appropriate Government. Section 44B likewise prohibits acquisition of land under Part VII except for purposes specified in Section 40 for private Companies.

35. Part VIII (Sections 45 to 55) deals with miscellaneous matters.

Eminent domain

36. 'Eminent domain' may be defined as the right or power of a sovereign State to take

private property for public use without the owner's consent upon the payment of just compensation. It means nothing more or less than an inherent political right, founded on a common necessity and interest of appropriating the property of individual members of the community to the great necessities and common good of the whole society. It embraces all cases where, by the authority of the State and for the public good, the property of an individual is taken without his consent to be devoted to some particular use, by the State itself, by a Corporation, public or private or by a private citizen for the welfare of the public [American Jurisprudence, 2d, Volume 26, pp. 638-39, para 1; Corpus Juris Secundum, Volume 29, p. 776, para 1; Words & Phrases, Permanent Edition, Volume 14, pp. 468-70].

37. 'Eminent domain' is thus inherent power of a governmental entity to take privately owned property, especially land and convert it to public use, subject to reasonable

compensation for the taking [vide P. Ramanatha Aiyar's Advanced Law Lexicon, Volume 2, page 1575].

38. The term 'eminent domain' is said to have originated by Grotius, legal scholar of the seventeenth century. He believed that the State possessed the power to take or destroy property for the benefit of the social unit, but he believed that when the State so acted, it was obligated to compensate the injured property owner for his losses.

39. In his well known work '*De Jure, Belli et Pacis*', the learned author proclaimed;

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

40. Blackstone too believed that State had no general power to take private property of

land-owners, except on the payment of a reasonable price. The right of the State or the sovereign to its or his own property is absolute while that of the subject or citizen to his property is only paramount. The citizen holds his property subject always to the right of the sovereign to take it for a public purpose. The power of eminent domain is merely a means to an end; viz. larger public interest.

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

42. Nichols in his classic book '*Eminent Domain*' defines it (eminent domain) as "the

power of sovereign to take property for public use without the owner's consent".

43. Another constitutional expert (Cooley) in his treatise on the '*Constitutional Limitations*', states;

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

44. Willis in his well known work '*Constitutional Law*' discusses two view points as to exercise of power of eminent domain. The older and stricter view was that unless the property was dedicated for user by the public at large or a considerable section thereof, it would not be for public use or for public purpose. The modern and more liberal view, however, is that it is not an essential condition of public use that the property

should be transferred to public ownership or for public user and it is sufficient that the public derives advantage from the scheme.

45. In *Fallbrook Irrigation District v. Bradley*, (1896) 164 U.S. 112 : 41 Law Ed. 369, an Act of California provided for the acquisition of lands whenever 50 land-owners or a majority of them in a particular locality required it for construction of a watercourse, the object of the legislation being to enable dry lands to be brought under wet cultivation. The validity of the Act was challenged on the ground that the acquisition would only benefit particular land owners who could take water from the channel and the public as such had no direct interest in the matter and consequently there was no public user. The contention was right if narrow view was to be accepted but was not well-founded if liberal view was to be adopted.

46. Rejecting the contention, the Court observed;

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

47. The above statement of law was reiterated in subsequent cases. In *Rindge Co. v. Los Angeles County*, (1923) 262 US 700 : 67 Law Ed 1186, the Court observed that "it is not essential that the entire community or even a considerable portion should directly enjoy or

participate in an improvement in order to constitute a public use."

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

"Over many years and in a multitude of cases the courts have vainly attempted to define comprehensively the concept of a public use; and to formulate a universal test even though it were possible, would in an inevitably changing world be unwise if not futile"..... and holding that those purposes were for the benefit of the public the court went on to observe "It is also said that since the taking is to provide apartments' to be rented to a class designated as persons of low income or to be leased or sold to limited dividend corporations the use is private and not public. This objection disregards the primary purpose of the legislation. **Use of a**

proposed structure, facility or service by everybody and anybody is one of the abandoned, universal tests of a public use."

(emphasis supplied)

49. In *Murray v. La Guardia*, 291 NY 320, a Town Corporation was formed for acquiring certain lands. It was financed by the Metropolitan Insurance Company which held all the stocks of the Corporation. The owners of the lands contended that the scheme was to benefit only few individuals and the Insurance Company which was a private Corporation and there was no public use in the project. The Court, however, rejected the argument.

50. Dealing with the contention that there was no public use in the project because the Insurance Company was benefited, the Court observed:

"Nor do we find merit in the related argument that unconstitutionality results from the fact that in the present case the statute permits the city to exercise the power of "Eminent

domain" to accomplish a project from which 'Metropolitan' a private corporation may ultimately reap a profit. ***If upon completion of the project the public good is enhanced it does not matter that private interests may be benefited.***" (emphasis supplied)

51. In *Samuel Berman v. Andrew Parker*, (1954) 348 US 26 : 99 L Ed 27 : 75 S Ct 98, owners instituted an action of condemnation of their property under the District of Columbia Redevelopment Act, 1945. Plans were approved and the Planning Commission certified them to the agency for execution. The agency undertook the exercise of redevelopment of the area. It was contended by the land owners that the project was not public project and their property could not be acquired.

52. Rejecting the contention, the Court observed that it does not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical,

aesthetic as well as monetary. It is within the power of the Legislature to determine that the community should be beautiful as also healthy, spacious as also clean, well-balanced as also carefully patrolled. According to the Court, the Congress and its authorized agencies have made determinations that take into account a wide variety of values and it was not for the Court to reappraise them. ***"If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way."*** (emphasis supplied)

53. Dealing with the contention that the project was undertaken by one businessman for the benefit of another businessman, the Court observed;

"The public end may be as well or better served through an agency of private enterprise than through a

department of government—or so the Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects. What we have said also disposes of any contention concerning the fact that certain property owners in the area may be permitted to repurchase their properties for redevelopment in harmony with the overall plan. That, too, is a legitimate means which Congress and its agencies may adopt, if they choose". (emphasis supplied)

54. In *Hawaii Housing Authority v. Midkiff*, 467 US 229 : 81 L Ed 2d 186 : 104 S Ct 2321, the Court held that, no doubt there is a role for Courts to play in reviewing a Legislature's judgment of what constitutes a public use, even when the eminent domain power is equated with the police power. But the Court in *Berman* made clear that it is "extremely narrow". The Court emphasized that any departure from this judicial restraint would result in courts deciding on what is and what is not a governmental function and in their invalidating legislation on the basis of their

view on that question. And the Court would not substitute its judgment for a Legislature's judgment as to what constitutes a public use "unless the use be palpably without reasonable foundation."

55. Recently, in *Susette Kelo v. City of New London*, (2005) 545 US 469 : 125 S Ct 2655 : 162 L Ed 439, the land owners challenged the city's exercise of **eminent domain** power on the ground that it was not for public use. The project in question was a community project for economic revitalization of the City of New London for which the land was acquired.

56. It was submitted by the learned counsel for the respondents that the facts in **Kelo** were similar to the facts of the present case. For that the counsel relied upon the Integrated Development Project. Dealing with the project, the Court stated;

"The Fort Trumbull area is situated on a peninsula that juts into the Thames River. The area comprises approximately 115 privately owned properties, as well as the 32 acres of land formerly occupied by the naval facility (Trumbull State Park now occupies 18 of those 32 acres). Parcel 1 is designated for a waterfront conference hotel at the center of a 'Small urban village' that will include restaurants and shopping. This parcel will also have marinas for both recreational and commercial uses. A pedestrian "riverwalk" will originate here and continue down the coast, connecting the waterfront areas of the development. Parcel 2 will be the site of approximately 80 new residences organized into an urban neighbourhood and linked by public walkway to the remainder of the development, including the state park. This parcel also includes space reserved for a new U.S. Coast Guard Museum. Parcel 3, which is located immediately north of the Pfizer facility, will contain at least 90,000 square feet of research and development office space. Parcel 4A is a 2.4-acre site that will be used either to support the adjacent state park, by providing parking or retail services for visitors, or to support the nearby marina. Parcel 4B will include a renovated marina, as well as the final stretch of the riverwalk. Parcels 5, 6 and 7 will provide land for office and retail space, parking, and water-dependent commercial uses."

57. The Court also stated;

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

58. The Court noted the contention of the petitioners that 'using **eminent domain** for economic development impermissibly blurs the boundary between public and private takings'. It also conceded that quite simply, the government's pursuit of a public purpose might benefit individual private parties. But rejected the argument by stating—

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

59. The Court reiterated; "The public end may be as well or better served through an agency of private enterprise than through a department of government - or so the Congress might conclude. ***We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects***". (emphasis supplied)

60. The above principles have been accepted and applied in India also. Immediately after the Constitution came into force, this Court had an occasion to consider the power of ***eminent domain*** in the leading case of *Charanjit Lal Chowdhury v. Union of India & Ors.*, (1950) 1 SCR 869.

61. Referring to the doctrine of ***eminent domain*** in American Legal system, Mukherjea, J. (as His Lordship then was) stated;

"It is a right inherent in every sovereign to take and appropriate private property belonging to individual citizens for public use. This right, which is described as *eminent domain* in American law, is like the power of taxation, an offspring of political necessity, and it is supposed to be based upon an implied reservation by Government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner".

62. In *Deputy Commissioner & Collector, Kamrup & Ors. v. Durganath Sarma*, (1968) 1 SCR 561; drawing distinction between police power and power of ***eminent domain***, this Court observed;

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

63. In *Coffee Board, Karnataka, Bangalore v. Commissioner of Commercial Taxes, Karnataka & Ors.*, (1988) 3 SCC 263, referring to American authorities, Mukharji, J. (as His Lordship then was) stated;

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

64. In *Scindia Employees' Union v. State of Maharashtra & Ors.*, (1996) 10 SCC 150, this Court observed;

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

expansion of dockyard for defence purpose, it is a public purpose".

65. In *Sharda Devi v. State of Bihar & Anr.*, (2003) 3 SCC 128, this Court said;

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

Public Purpose

66. There is no dispute that an appropriate Government may acquire land for any 'public purpose'. The expression 'public purpose' is defined in clause (f) of Section 3 of the Act. As already noted earlier, the definition is **inclusive** in nature and reads thus:

(f) The expression "public purpose"
includes-

(i) the provision of village-sites or the extension, planned development or improvement of existing village-sites;

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

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

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

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

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered

under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

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

(viii) the provision of any premises or building for locating a public office,

—but does not include acquisition of land for companies;

(emphasis supplied)

67. The expression ('public purpose') is of very wide amplitude. It is merely illustrative and not exhaustive. The inclusive definition does not restrict its ambit and scope. Really, the expression is incapable of precise and comprehensive definition. And it is neither desirable nor advisable to attempt to define it. It is used in a generic sense of

including any purpose wherein even a fraction of the community may be interested or by which it may be benefited.

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

69. Before about a century, in *Hamabai Framjee Petit v. Secretary of State*, (1911) 13 Bom LR 1097, certain lands were sought to be acquired for erecting buildings for the use of Government Officials. The action was challenged in the High Court of Judicature at Bombay contending that the purpose of acquisition could not be said to be 'public purpose'.

70. Negating the arguments and upholding the acquisition, Batchelor, J. observed;

"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 purpose' in the lease; it is enough to say that, ***in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned***". (emphasis supplied)

71. The aggrieved appellant approached the Privy Council. The Council in *Hamabai Framjee Petit v. Secretary of State*, (1914) 42 IA 44 : AIR 1914 PC 20 approved the above observations of Batchelor, J. Speaking for the Judicial Committee, Lord Dunedin stated;

"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. But here, so far from holding them to be wrong, the whole of the learned Judges, who are thoroughly conversant with the conditions of Indian life, say that they are satisfied that the scheme is one which will redound to public

benefit by helping the Government to maintain the efficiency of its servants. ***From such a conclusion their Lordships would be slow to differ, and upon its own statement it commends itself to their judgment"***.

(emphasis supplied)

72. In *Veeraraghavachartar v. Secretary of State*, (1926) 49 Mad 237 : AIR 1925 Mad 837, certain vacant sites were acquired for enabling *Panchamas* to build houses. It was argued that this was not a public purpose as the benefits of the acquisition were to go only to few individuals. The contention was rejected by the Court observing that it is not possible to define what a public purpose is. There can be no doubt that provision of house sites for poor people is a public purpose for it benefits a large class of people and not one or two individuals.

73. In *State of Bihar v. Kameshwar Singh*, 1952 SCR 889, a Constitution Bench of this

Court was examining vires of certain provisions of the Bihar Land Reforms Act, 1950 and other State laws in the context of Article 31 of the Constitution (as then stood). The constitutional validity was challenged on the ground that the Act failed to provide for compensation and there was lack of public purpose.

74. The Court, however, negatived the contention. As to 'public purpose', Mahajan, J. (as His Lordship then was), observed;

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

(emphasis supplied)

75. In the concurring judgment, S.R. Das, J. (as His Lordship then was) stated;

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

(emphasis supplied)

76. In *State of Bombay v. Ali Gulshan*, (1955) 2 SCR 867, a Constitution Bench of this Court considered vires of the Bombay Land Requisition Act, 1948 (Act 23 of 1948). Interpreting provisions of the Constitution and Schedule VII thereof, the Court held that

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

77. In *State of Bombay v. R.S. Nanji*, 1956 SCR 18, land was requisitioned for accommodating employees of Road Transport Corporation. It was contended that there was no 'public purpose' and hence the action was illegal. Referring to *Hamabai, Ali Gulshan* and *State of Bombay v. Bhanji Munji*, (1955) 1 SCR 777, the Constitution Bench stated that the expression 'public purpose' must be decided in

each case examining closely all the facts and circumstances of the case.

78. On the facts of the case, it was held that a break down in the organization of the Corporation, leading to dislocation of the road transport system would create a chaotic condition to the detriment of the interest of the community. Providing living accommodation for its employees is a statutory activity of the Corporation and it is essential for the Corporation to provide such accommodation in order to ensure an efficient working of the road transport system and it must, therefore, be held to be 'public purpose'.

79. In the leading case of *Somawanti (Smt.) & Ors., v. State of Punjab & Ors.*, (1963) 2 SCR 774, certain lands were acquired by the Government for public purpose, viz. for setting up a factory for manufacturing various ranges of refrigeration compressors and

ancillary equipments. It was contended that acquisition was not for 'public purpose' and hence it was unlawful.

80. Interpreting inclusive definition of 'public purpose' in the Act, Mudholkar, J. stated;

"This is an inclusive definition and a compendious one and therefore, does not assist us very much in ascertaining the ambit of the expression 'public purpose'. Broadly speaking the expression 'public purpose' would, however, include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned".

81. It was also observed that 'public purpose' is bound to vary with the times and the prevailing conditions in a given locality and, therefore, it would not be a practical proposition even to attempt a comprehensive definition of it. It is because of this that the Legislature has left it to the Government

to say what is a public purpose and also to declare the need of a given land for a public purpose.

82. In *Arnold Rodricks v. State of Maharashtra*, (1966) 3 SCR 885, this Court held that the phrase 'public purpose' has no static connotation, which is fixed for all times. It is also not possible to lay down a definition of what public purpose is, as the concept of public purpose may change from time to time. It, however, involves in it an element of general interest of the community which should be regarded as a public purpose.

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

made directly and vitally subserves public interest.

84. Recently, in *Daulat Singh Surana v. First Land Acquisition Collector*, (2007) 1 SCC 641, land was sought to be acquired for construction of office of Deputy Commissioner of Police (Security Control). It was contended that there was no element of public purpose and hence the acquisition was not in accordance with law.

85. Negating the contention and upholding the acquisition, the Court held that the expression 'public purpose' includes a public purpose in which greatest interest of the community as opposed to a particular interest of an individual is directly concerned. The concept is not static but changes with the passage of time. Power of **eminent domain** can, therefore, be exercised by the State in public interest.

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

87. In *State of Karnataka & Anr. v. Ranganatha Reddy & Anr.*, (1977) 4 SCC 471; Krishna Iyer, J. stated;

"There may be many processes of satisfying a public purpose. A wide range of choices may exist. The State may walk into the open market and buy the items, movable and immovable, to fulfill the public purpose; or it may compulsorily acquire from some private person's possession and ownership the articles needed to meet the public purpose; it may requisition, instead of resorting to acquisition; it may take on loan or on hire or itself manufacture or produce. All these steps are various alternative means to meet the public purpose. The State may

need chalk or cheese, pins, pens or planes, boats, buses or buildings, carts, cars, or eating houses or any other of the innumerable items to run a welfare-oriented administration or a public corporation or answer a community requirement. If the purpose is for servicing the public, as governmental purposes ordinarily are, then everything desiderated for subserving such public purpose falls under the broad and expanding rubric. The nexus between the taking of property and the public purpose springs necessarily into existence if the former is capable of answering the latter. On the other hand, if the purpose is a private or non-public one, the mere fact that the hand that acquires or requires is Government or a public corporation, does not make the purpose automatically a public purpose. Let us illustrate. If a fleet of cars is desired for conveyance of public officers, the purpose is a public one. If the same fleet of cars is sought for fulfilling the tourist appetite of friends and relations of the same public officers, it is a private purpose. If bread is 'seized' for feeding a starving section of the community, it is a public purpose that is met but, if the same bread is desired for the private dinner of a political maharajah who may pro tern fill a public office, it is a private purpose. Of course, the thing taken must be capable of serving the object of the taking. ***If you want to run bus transport you cannot take buffaloes"***.

(emphasis supplied)

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

89. His Lordship said;

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

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

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

(emphasis supplied)

91. Referring to leading authorities on '***eminent domain***' and 'public purpose', the Commission observed;

"It is, in our view, neither possible nor expedient to attempt an exhaustive

definition of public purposes. The only guiding rule for the determination of its meaning is that the proposed acquisition or requisition should tend to promote the welfare of the community as distinct from the benefit conferred upon an individual. ***The mere fact that the immediate use is to benefit a particular individual would not prevent the purpose being a public one, if in the result it is conducive to the welfare of the community.*** The question is exhaustively discussed in *Thambiran Padayachi v. State of Madras*, AIR 1952 Mad 756, by Venatarama Aiyar, J. All that can, therefore, be attempted in a legislation of this kind is to provide an inclusive definition, so as to endow it with sufficient elasticity to enable the courts to interpret the meaning of the expression 'public purpose' according to the needs of the situation, and this is what we have attempted".

(emphasis supplied)

Industrial policy of State

92. Learned counsel for the respondents invited our attention to Industrial Policy, 2000-05 adopted by the State of Andhra Pradesh. Reference was also made to G.O. Ms. No.427 dated 18th December, 2000 under which the Government decided to undertake Mega

Infrastructure Projects in the State to attract industries in the State and for the overall development of the State. The policy laid down guidelines for attracting and facilitating private investment in infrastructure. It provided for infrastructure projects implementation in Private-Public Partnership (PPP) requiring Government support. The Policy envisaged the need for a special legislation called Infrastructure Development Act ('IDA') supported by rules, guidelines and sectorial policies. While IDA was to constitute a Special Infrastructure Promotion Authority (IPA) having quasi judicial functions, the Task Force was to undertake executive functions outlined in IDA. The intention behind the integrated project was to establish Hyderabad as a major business-cum-leisure tourism infrastructure asset for the State. It was also stated that in the background of 'World Tourism Organisation Report on the State of Andhra Pradesh in 2000' and in the light of the 'Vision 2000 Document'

prepared in mid 1990s highlighting the need for tourism as an important economic driver for the State, the State Government initiated a Project Development exercise in 2000-01 for an international standard convention centre complex integrated with other components.

93. In pursuance of the above policy, the Andhra Pradesh Infrastructure Development Enabling Act, 2001 (Act No. 36 of 2001) has been enacted.

94. The Preamble of the Act states;

"An Act to provide for the rapid development of physical and social infrastructure in the State and attract private sector participation in the designing, financing, construction, operation and maintenance of infrastructure projects in the State and provide a comprehensive legislation for reducing administrative and procedural delays, identifying generic project risks, detailing various incentives, detailing the project delivery process, procedures for reconciliation of disputes and also to provide for other ancillary and incidental matters thereto with a view to presenting bankable projects to the private sector and improving level of infrastructure in the state of Andhra

Pradesh and for matters connected therein or incidental thereto."

95. Sub-section (iii) of Section 1 enacts that the Act will apply to all infrastructure projects implemented through public-private partnership in the sectors enumerated in Schedule III of the Act and to such other sectors as may be notified by the Government under the Act from time to time. Detailed provisions have been made for infrastructure project to be undertaken under the Act.

96. It was, therefore, submitted by the learned counsel for the respondents that a policy decision was taken by the State to develop information technology and telecommunications, industrial knowledge, tourism, trade, conventions and exhibition centres, etc. It was also provided that if the Government land is not available, APIIC would acquire land for the Project.

97. The respondents also referred to a Memorandum of Understanding (MoU) between APIIC

and Emaar Properties. It was submitted that in pursuance of the policy decision and MoU, Integrated Project was to be undertaken by the respondents which was a 'public purpose' under Sections 4 and 6 of the Act.

98. It was contended by the learned counsel for the respondents that a policy decision was taken by the State to acquire land pursuant to 'industrial policy' of the State. It was submitted that as per settled law, it is open to public authorities to formulate policy, to change or rechange it and normally a writ Court will not interfere in such matters.

99. In this connection, our attention has been invited to several decisions of this Court. It is, however, not necessary for us to refer to all the decisions. Normally, a writ Court will not propel into the uncharted ocean of Governmental Policy [*vide Bennett*

Coleman & Co. v. Union of India, (1972) 2 SCC 788].

100. Recently, in *Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal & Ors.*, (2007) 8 SCC 418, one of us (C.K. Thakker, J.) considered the issue in detail and observed;

"In our judgment, it is well-settled that public authorities must have liberty and freedom in framing policies. No doubt, the discretion is not absolute, unqualified, unfettered or uncanalised and judiciary has control over all executive actions. At the same time, however, it is well-established that courts are ill-equipped to deal with these matters. In complex social, economic and commercial matters, decisions have to be taken by governmental authorities keeping in view several factors, and it is not possible for courts to consider competing claims and conflicting interests and to conclude which way the balance tilts. **There are no objective, justiciable or manageable standards to judge the issues nor such questions can be decided on 'a priori' considerations**".

(emphasis supplied)

101. It is, therefore, a settled proposition of law that in absence of illegality or violation of law, a Court of law will not interfere in policy matters.

Acquisition for Company: Whether public purpose?

102. The main contention of the learned counsel for the appellants in all these cases is that the land is sought to be acquired by the Government for a private Company. In accordance with the provisions of the Act, therefore, procedure laid down by the Legislature in Part VII was required to be followed. According to the counsel, since the acquisition is not in accordance with Part VII of the Act, the entire acquisition is vitiated being contrary to law. It is, therefore, liable to be quashed and set aside.

103. The submission on behalf of the respondents, on the other hand, is that the acquisition is by the State for its instrumentality *i.e.* APIIC. Such acquisition

was, therefore, for 'public purpose'. The entire compensation was to be paid by APIIC and hence procedure, which was required to be followed, was under Part II and not under Part VII as contended by the writ petitioners. Admittedly, the said procedure has been followed and hence it cannot be said that the acquisition was not in consonance with law. It was also submitted that in earlier proceedings, this contention had been expressly raised by the writ petitioners before the High Court. The learned Single Judge specifically negatived it holding that the land was needed for 'public purpose'. The said order was confirmed even by the Division Bench. Hence, so far as acquisition by the 'State' under Part II of the Act for public purpose is concerned, the earlier order has attained finality. The High Court held that the appropriate Government was not justified in invoking urgency clause under Section 17 of the Act and no urgency could demonstrably be shown to exist, the declaration

as to urgency and dispensing with the inquiry under Section 5-A of the Act was held unlawful. The State Government was, therefore, directed to follow procedure under Section 5A of the Act by issuing notice to the land owners by inviting objections and affording opportunity of being heard to the persons interested in the land. The said exercise was thereafter undertaken by the authorities and final notification under Section 6 of the Act was issued which does not call for interference and the High Court was justified in dismissing the appeals.

104. Now the term 'Company' is defined in Clause (e) of Section 6 thus:

"(e) the expression 'Company' means-

- (i) a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), other than a Government company referred to in clause (cc);
- (ii) a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, other

than a society referred to in clause (cc);

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

105. The above definition makes it clear that a 'company' is as defined under the Companies Act, 1956, or a society registered under the Societies Registration Act, 1860 or a cooperative society under any State law.

106. Section 4 of the Act expressly authorizes the appropriate Government to issue preliminary notification for acquisition of land likely to be needed for any public purpose or 'for a company'. Likewise, Section 6 declares that when the appropriate Government is satisfied that a particular land is needed for a public purpose or 'for a company', a declaration shall be made to that effect. It is thus clear that appropriate Government may acquire land if such land is needed for any

public purpose or 'for a company'. If it is so, acquisition will be governed by Part II of the Act and the procedure laid down in the said Part has to be followed. Part VII, on the other hand, deals with acquisition of land for companies. In such cases, previous consent of appropriate Government and execution of agreement for transfer of land is necessary and procedure laid down in that Part is *sine qua non* for the acquisition.

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

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

109. *Babu Barkya Thakur v. State of Bombay (now Maharashtra) & Ors.*, (1961) 1 SCR 128 was *probably* the first leading decision of this Court on the point. In that case, a Notification was issued by the erstwhile State of Bombay on April 3, 1959 under Section 4 of the Act wherein it was stated that the lands specified in the schedule attached to the Notification were likely to be needed for the purpose of M/s Mukund Iron & Steel Works Ltd., a Company registered under the Indian Companies Act, 1913. The petitioner lodged objections challenging the Notification on the ground that the lands were not required for 'public purpose' and the proceedings were vexatious and malicious. In the counter-affidavit filed by the Special Land Acquisition Officer, it was denied that the acquisition of the land was not

for the public purpose and the proceedings were, therefore, vitiated.

110. The Court, after referring the Preamble and the relevant provisions of the Act, held that acquisition for Company under the Act was for a 'public purpose' inasmuch as constructing dwelling houses and providing amenities for the benefit of workmen employed by the Company would serve public purpose.

111. The Court observed;

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

purpose inasmuch as it cannot be seriously contended that constructing dwelling houses, and providing amenities for the benefit of the workmen employed by it and construction of some work of public utility do not serve a public purpose".

(emphasis supplied)

112. In *Pandit Jhandulal & Ors. v. State of Punjab & Ors.*, (1961) 2 SCR 459, the land of the appellant was sought to be acquired for construction of houses by members of the Thapar Industries Co-operative Housing Society Ltd., Yamuna Nagar. Proceedings were, therefore, initiated for acquisition of land under Part II of the Act. The action was challenged, *inter alia*, on the ground that there was non-compliance with the provisions of Part VII of the Act and the proceedings were liable to be quashed as the said procedure had not been followed. The High Court held that the land was acquired for a public purpose and there was no need to comply with the provisions of Part VII, even though the Company was to pay the entire

amount of compensation (which according to this Court was not factually correct). The aggrieved land owner approached this Court.

113. According to this Court, the main point for determination was whether or not the acquisition proceedings had been vitiated by reason of the admitted fact that there was no attempt made by the Government to comply with the requirement of Part VII of the Act. Referring to *Babu Barkya*, this Court held that the conclusion arrived at by the High Court was 'entirely correct', though the process of reasoning by which it had reached the conclusion was erroneous. The Court observed that the Act contemplates acquisition for (i) a public purpose, and (ii) for a Company; thus, conveying the idea that acquisition for a Company, is not for a public purpose. It was also observed that the purposes of public utility, referred to in Sections 40 and 41 of the Act were akin to public purpose. Hence, acquisition for a public purpose as also

acquisition for a Company are governed by considerations of public utility. But the procedure for the two kinds of acquisitions is different and if it is for a Company, then acquisition has to be effected in accordance with the procedure laid down in Part VII.

114. Considering the ambit and scope of Sections 6 and 39 to 41 and referring to *Babu Barkya*, the Court observed;

"There is no doubt that, as pointed out in the recent decision of this Court, the Act contemplates for a public purpose and for a Company, thus conveying the idea that acquisition for a Company is not for a public purpose. It has been held by this Court in that decision that the purposes of public utility, referred to in Ss. 40-41 of the Act, are akin to public purpose. Hence, acquisition for a public purpose as also acquisitions for a company are governed by considerations of public utility. But the procedure for the two kinds of acquisitions is different, in so far as Part VII has made substantive provisions for acquisitions of land for Companies. ***Where acquisition is made for a public purpose, the cost of acquisition for payment of compensation has to be paid wholly or partly out of Public Revenues, or some fund controlled or***

managed by a local authority. On the other hand, in the case of an acquisition for a company, the compensation has to be paid by the Company. But, in such a case, there has to be an agreement, under S. 41, for the transfer of the land acquired by the Government to the Company on payment of the cost of acquisition, as also other matters not material to our present purpose. The agreement contemplated by S.41 is to be entered into between the Company and the appropriate Government only after the latter is satisfied about the purpose of the proposed acquisition, and subject to the condition precedent that the previous consent of the appropriate Government has been given to the acquisition. The 'previous consent' itself of the appropriate Government is made to depend upon the satisfaction of that government that the purpose of the acquisition was as laid down in S.40. It is, thus, clear that the provisions of Ss. 39-41 lay down conditions precedent to the application of the machinery of the Land Acquisition Act, if the acquisition is meant for a company."

(emphasis supplied)

115. The Court then dealt with the extent and applicability of Section 6 of the Act and stated:

"Section 6 is, in terms, made subject to the provisions of Part VII of the Act. The provisions of Part VII, read

with section 6 of the Act, lead to this result that the declaration for the acquisition for a Company shall not be made unless the compensation to be awarded for the property is to be paid by a company. The declaration for the acquisition for a public purpose, similarly, cannot be made unless the compensation, wholly or partly, is to be paid out of public funds. Therefore, in the case of an acquisition for a Company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But, that does not necessarily mean that an acquisition of a Company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, **the essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne, wholly or in part, out of public funds. Hence, an acquisition for a Company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition for a Company is to be made at the cost entirely of the Company itself, such an acquisition comes under the provisions of Part VII.** As in the present instance, it appears that part at any rate of the compensation to be awarded for the acquisition is to come eventually from out of public revenues, it must be held that the acquisition is not for a Company simpliciter. It was not,

therefore, necessary to go through the procedure prescribed by Part VII. We, therefore, agree with the conclusion of the High Court, though not for the same reasons".

(emphasis supplied)

116. Reference was also made to *R.L. Arora (I) v. State of Uttar Pradesh & Ors.*, (1962) Supp (2) SCR 149. In that case, land was sought to be acquired by the Defence Department of the Government of India for the construction of textile machinery parts factory by Lakshmi Ratan Engineering Works Limited, Kanpur. Notifications were issued under the Act applying 'urgency' clause. Admittedly, no procedure laid down under Part VII of the Act was followed. A writ petition was, therefore, filed praying for quashing of Notifications and land acquisition proceedings. The main ground in support of the petition was that procedure under Part VII (Sections 38 to 42) of the Act had not been complied with.

117. Referring to the relevant provisions of the Act and *Babu Barkya and Pandit*

Jhandulal, Wanchoo, J. (as His Lordship then was) for the majority stated;

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

authority. In such a case though the acquisition may look as if it is primarily for a company it will be covered by that part of s. 6 which lays down that acquisition may be made for a public purpose if the whole or part of the compensation is to be paid out of the public revenues or some fund controlled or managed by a local authority. Such was the case in *Pandit Jhandu Lal v. State of Punjab*. In that case the acquisition was for the construction of a labour colony under the Government sponsored housing scheme for the industrial workers of the Thapar Industries Co-operative Housing Society Limited and part of the compensation was to be paid out of the public funds. In such a case this Court held that "an acquisition for a company may also be made for a public purpose within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds" and therefore it was not necessary to go through the procedure prescribed by Part VII. **It is only where the acquisition is for a company and its cost is to be met entirely by the company itself that the provisions of Part VII apply.** In the present case it is not the case of the respondents that any part of the compensation is to be paid out of what may be called public funds. It is not in dispute that the entire compensation is to be paid by the Works and therefore the provision of Part VII would apply to the present case; and it is in this background that we have to consider

the contention raised on behalf of the appellant".

(emphasis supplied)

118. Construing Sections 40 and 41 of the Act, the majority conceded that it is no doubt true that it is for the Government to be satisfied that the work is likely to prove useful to the public. It is also true that it is for the Government to be satisfied that the terms in the agreement should provide that public shall be entitled to use the work. That does not, however, mean that it is Government which has the right to interpret the words used in Section 40(1) (b) or clause (5) of Section 41. It is the Court which has to interpret what those words mean. It is only after the Court has interpreted the words that it is the Government which has to carry out the object of Sections 40 and 41 to its satisfaction.

119. The majority declared;

"The Government cannot say that Ss.40 and 41 mean this and further say that they are satisfied that the meaning they have given to the relevant words in

these sections has been carried out in the terms of the agreement provided by them. It is for the Court to say what the words in Ss. 40 and 41 mean though it is for the Government to decide whether the work is useful to the public and whether the terms contain provisions for the manner in which the public shall be entitled to use the work. It is only in this latter part that the Government's satisfaction comes in and if the Government is satisfied, that satisfaction may not be open to challenge; but the satisfaction of the Government must be based on the meaning given to the relevant words in Ss. 40 and 41 by the Court. ***The Government cannot both give meaning to the words and also say that they are satisfied on the meaning given by them. The meaning has to be given by the court and it is only thereafter that the Government's satisfaction may not be open to challenge if they have carried out the meaning given to the relevant words by the Court.***"

(emphasis supplied)

120. Sarkar, J. (as His Lordship then was), in a dissenting judgment expressed regret in agreeing with the majority. His Lordship stated:

"I am unable to accept the appellant's reading of S. 41(1) (b) as correct. The words "such work is likely to prove useful to the public" read by themselves seem to me plainly to imply

a work the construction of which results in some benefit which the public would enjoy. They do not contemplate only a work which itself can be put by the public to its use. For example, a work producing electricity for supply to the public is a work which is useful to the public. So also a work producing any commodity like say, medicines or cloth would be a work which would be useful to the public. Again, I feel no doubt that a radio broadcasting station would be work which would be useful to the public. Take another case, namely, a post-graduate college turning out a small number of highly qualified medical doctors. There can be no doubt that the building for the college can be said to be a work useful to the public. It would be so not because the public would have a chance of getting training there and a small number of members of the public would after the training be able to make a good livelihood, but because an institution of this kind is useful to the public as it turns out men who give very useful service to the public. In all the illustrations given the works would be useful to the public though the public might have no access to the works or any right to use them directly. ***I think it would be unduly restricting the meaning of the word 'useful' to say that a work is useful to the public only when it can directly be used by the public.*** The words are not "work which the public can use", in which case it might with some justification have been said that the work must be such

as the public could use. In the Shorter Oxford Dictionary, among the meanings of 'useful' appear, "'having the qualities to bring about good or advantage", "helpful in effecting a purpose". ***I find no reason not to apply these meanings to the word 'useful' in the section that I am considering.*** (emphasis supplied)

121. In *R.L. Arora (II) v. State of Uttar Pradesh & Ors.*, (1964) 6 SCR 784, this Court held that in view of the amendment made in the Act, even if the acquisition did not satisfy conditions laid down under clause (a) and clause (b) of sub-section (1) of Section 40 of the Act, it would be valid, if they satisfy conditions in clause (aa) introduced by the amendment Act. It was also held that once the Government decided to acquire land for public purpose, such acquisition cannot be challenged on the ground that procedure laid down in Part VII had not been followed.

122. The Court, keeping in view the Land Acquisition (Amendment) Act, 1962 (Act 31 of 1962), held that clause (aa) of sub-section (1)

of Section 40 as inserted by Act 31 of 1962 did not contravene Article 31 (2) or Article 19 (1) (f) of the Constitution. Accordingly the acquisition was held legal and valid.

123. A special reference may be made to a decision of the Division Bench of the High Court of Gujarat in *Motibhai Vithalbhai Patel & Anr. V. State of Gujarat & Anr.*, AIR 1961 Guj 93. In *Motibhai*, land was sought to be acquired for a Company, namely, Sarabhai Chemicals for its expansion. It was contended that acquisition was not for public purpose under Section 4 of the Act and it was bad in law.

124. Considering the relevant provisions of the Act as also leading cases on the point, the Court held that even if the acquisition of land is for a private concern whose sole aim is to make profit, the intended acquisition of land would materially help in saving foreign exchange in which the public is also vitally

concerned in our economic system. It can, therefore, be said to be a public purpose and would not be bad.

125. The Court stated;

"This is just as well. So diverse and varied can be the activities, engagements and operations which may redound to the general benefit of the public and in which the general interest of the public can be said to be really involved that it is Impossible to expect a definition exclusive or inclusive which will aptly meet every particular objective within the matrix of public purpose and not fail in some circumstances. The expression is of convenient vagueness and the court can at best give temporary definiteness but not definitiveness to the undefined and shifting boundaries of a field which now seems likely to raise some frequent and fighting issues and give rise to different problems for adjudication".

126. It was also observed:

"Public purpose is not a constant. The scope of an expression which conjugates general interest of the public must necessarily depend inter alia on social and economic needs and broad interpretation of the democratic

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

(emphasis supplied)

127. The Court proceeded to state;

"In the field of economic progress and interest of the public the application of the rule would include operations which are more or less indispensable

to the community. The very lack of definitiveness of the expression public purpose, somewhat paradoxical though it may seem requires that the field of its coverage must extend to concerns which are fit to serve the common welfare. That coverage can include activities open to the initiative of both private enterprise and public administration for private enterprise is certainly amenable to public control and can be an efficient instrument of economic benefit".

128. Upholding the acquisition, the Court concluded;

"It cannot be ignored that Respondent No. 2 Company is a scheduled industry controlled by the provision of the Industries Development and Regulation Act, 1951. The price of its products is subject to these controls. We are also satisfied that the public is vitally concerned in the saving of foreign exchange in our present economic situation and that this is an aspect of the matter which has to be borne in mind. We are satisfied that the respondents are correct in their submission that the intended acquisition of lands in dispute would materially help in the saving of such exchange. We have to consider together all the aspects of the case which redound to and result in the benefit of the public and on an assessment of all the facts and circumstances of the

case and the cumulative effect of the same we are of the opinion that the land in dispute is needed for a public purpose as contended by the respondents. We may add that the Notifications under Sections 4 and 6 are not defective on any of the grounds urged before us on behalf of the petitioner as held by us and the declaration under Section 6 is conclusive evidence that the land in dispute is needed for a public purpose".

129. In *Arnold Rodricks, Wanchoo, J.* (as His Lordship then was) stated that there is no reason why the State or local authority should have no power to get further development done through private agencies by lease, assignment or sale of acquired land.

130. In *Jage Ram & Ors. V. State of Haryana & Ors.* (1971) 1 SCC 671, a Notification under Section 4 of the Act was issued for acquisition of land for public purpose, namely, for setting up of a factory for the manufacture of China-ware and Porcelain-ware. Urgency clause under Section 17 of the Act was also applied by dispensing with enquiry under Section 5A of the

Act. The action was challenged by the land owners.

131. Rejecting the contention, upholding the acquisition and following *Somawanti*, the Court held that so long as it is not established that the acquisition is sought to be made for some collateral purpose, the declaration of Government that it is made for a public purpose is final, conclusive and not open to challenge.

132. In *Aflatoon & Ors. v. Lieutenant Governor of Delhi & Ors.* (1975) 4 SCC 285, land was sought to be acquired for "Planned Development of Delhi". Neither the Master Plan nor the Zonal Plan was ready. The question before this Court was whether acquisition proceedings could have been initiated in the absence of Master Plan or Zonal Plan.

133. Considering the relevant provisions of the Delhi Development Act, 1957, the Court held that the proceedings did not get vitiated in the absence of such Plan. The Court observed

that acquisition generally precedes development. If for proper development, land is sought to be acquired, such action could not be said to be illegal, unlawful or in colourable exercise of power.

134. It was also contended that the acquisition was for Company inasmuch as after acquisition, the Government proposed to hand over the property or a portion thereof to Cooperative Housing Societies and since procedure in Part VII of the Act was not followed, the acquisition was not valid.

135. Even the said contention was negatived by the Court observing that merely because the Government allotted a portion of the property to Cooperative Societies, Part VII did not get attracted and the acquisition could not be held invalid [See also *Ajay Krishan Singhal v. Union of India*, (1996) 10 SCC 721].

136. In *S.S. Darshan v. State of Karnataka & Ors.* (1996) 7 SC 302, land was sought to be acquired under the Act for public purpose,

namely, for setting up Information Technological Park. Challenging the acquisition, it was contended by the petitioners that the acquisition was *mala fide* and in colourable exercise of power since primarily the acquisition was for a Private Limited Company and not for the State.

137. The relevant part of the Notification read thus:

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

(emphasis supplied)

138. Emphasizing the fact that the acquisition was through Board, this Court ruled that acquisition was for a public purpose. The notification stated about public purpose of establishment of **information technological park through the Board.**

139. Considering various clauses in the Joint Venture Agreement, the Court held that

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

140. In *W.B. Housing Board Etc. v. Brijendra Prasad Gupta* (1997) 6 SCC 207, land was acquired for providing houses to poor people. The action was challenged, *inter alia*, on the ground that the Housing Board was to earn profit and hence it could not have been said to be a public purpose.

141. Refuting the contention and upholding the acquisition, the Court took note of the fact that it was a matter of common knowledge that there is acute shortage of housing accommodation both in rural and urban areas of the country. The Court also stated that since late the prices of real estate have skyrocketed making it beyond the reach of low income and middle income group of people. Hence, the State has a duty to give shelter to

homeless people, specially, to the people of the low income group. If for that purpose it sought to acquire land, it could not be said that acquisition was illegal or unlawful.

142. Regarding earning of profit, the Court stated:

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

143. The Court concluded:

"The Court must shake off its myth that public purpose is served only if the State or the Housing Board or the joint sector company does not earn any profit. There cannot be any better authority that the State or the statutory corporation to supervise or monitor the functions of the joint venture company. **Courts will**

certainly step in if the public purpose is sought to be frustrated".

(emphasis supplied)

144. Reference was also made to *Pratibha Nema & Ors. v. State of Madhya Pradesh & Ors* [2003] 10 SCC 626. There, a piece of dry land of the appellants and others was notified for acquisition under Section 4 of the Act for public purpose, namely, for establishment of '***Diamond Park***'. The acquisition was challenged on the ground that it was not for public purpose but was meant only to benefit a Company and its associates, and as such it was in colourable exercise of power and *ultra vires* the Act.

145. Referring to earlier decisions of this Court and drawing distinction between acquisition by State for 'public purpose' covered by Part II and acquisition for a 'Company' under Part VII, the Court stated;

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

(emphasis supplied)

146. Reliance was also placed on *State of Karnataka & Anr. v. All India Manufacturers Organisation & Ors.*, (2006) 4 SCC 683. In that case, the Government of Karnataka undertook a mega project for developing its transport and

communication system. A Memorandum of Understanding was entered into between State Government and a Company for implementation of the project and lands were acquired. A Public Interest Litigation (PIL) was filed in the High Court alleging that the land was not needed for public purpose and yet excess land was acquired and had been given to a Company. The action was, therefore, illegal, unlawful and mala fide.

147. Negating the contention and upholding the action, this Court observed that the project was an integrated infrastructure development and not merely a highway project. As an integrated project, it required acquisition and transfer of lands even away from the main alignment of the road. Acquisition of land and giving it to the Company was, therefore, legal and lawful and did not suffer from mala fide.

148. The counsel for the appellants referred to *Amarnath Ashram Trust Society & Anr. v. Governor of U.P. & Ors.*, (1998) 1 SCC 591. In that case, land was sought to be acquired for play ground for students of Amarnath Vidya Ashram (public school), Mathura. Notification under Section 4 of the Act was issued stating that the land was to be acquired for 'public purpose'. The land-owner challenged the acquisition contending that the land was acquired for a Society and since procedure prescribed in Part VII was not followed, the acquisition was bad in law.

149. Upholding the contention, quashing the proceedings and referring to *Pandit Jhandu Lal*, this Court observed;

"It is now well established that if the cost of acquisition is borne either wholly or partly by the Government, the acquisition can be said to be for a public purpose within the meaning of the Act. But if the cost is entirely borne by the company

then it is an acquisition for a company under Part VII of the Act.

... ..

Admittedly, in the present case the entire cost of acquisition is to be borne by the appellant society and, therefore, it is an acquisition for a company and not for a public purpose. That is also borne out by the notification issued under Section 6 of the Act which states that "the land mentioned in the schedule below is needed for the construction of play-ground for students of Amar Nath Vidya Ashram (public school), Mathura in district Mathura by the Amar Nath Ashram Trust, Mathura". Therefore, simply because in the notification issued Under Section 4 of the Act it was stated that the land was needed for a public purpose, namely, for a play-ground for students of Amar Nath Vidya Ashram (public school), Mathura, it cannot be said that the acquisition is for a public purpose and not under Chapter (Part) VII for the appellant-society in view of subsequent events and the declaration made Under Section 6". (emphasis supplied)

150. Finally, reference was made to a recent decision of this Court in *Devinder Singh & Ors., v. State of Punjab & Ors.*, (2008) 1 SCC 728. In *Devinder Singh*, land was sought

to be acquired by the State to set up '*Ganesha Project*', a Company registered under the Companies Act, 1956. The acquisition was challenged on the ground that though land was sought to be acquired for a Company, procedure was followed under Part II and not under Part VII and hence it was bad in law. The record revealed that the payment of entire amount of compensation was to be made by the Company. It was, therefore, incumbent to follow procedure laid down in Part VII. During the pendency of the writ petition, however, it was contended by the State that it would be contributing Rs.100/- and hence it was covered by Part II and the acquisition was legal and valid.

151. Observing that the acquisition was for a Company and not by the State for a '*public purpose*', the Court held that the procedure laid down in Part VII was required to be followed. Since it was not done, the acquisition was bad in law.

152. Negating the contention that the acquisition was by the State, this Court said;

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

(emphasis supplied)

Satisfaction of Government and Judicial Review

153. In our judgment, in deciding whether acquisition is for 'public purpose' or not, ***prima facie***, Government is the best judge. ***Normally***, in such matters, a writ Court will not interfere by substituting its judgment for the judgment of the Government.

154. In *Hamabai*, the Judicial Committee of Privy Council stated;

"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".

(emphasis supplied)

155. This Court, in *R.S. Nanji*, reiterated the principle laid down by the Privy Council. The Constitution Bench observed;

"Prima facie the Government is the best judge as to whether 'public purpose' is served by issuing a requisition order, but it is not the sole judge. The courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a 'public purpose'".

(emphasis supplied)

156. In *Somawanti*, this Court interpreted sub-section (3) of Section 6 of the Act and held that the declaration made under Section 6 of the Act is 'conclusive evidence' that the land is needed for public purpose.

157. It was contended that the declaration can be made by the Government arbitrarily and if such declaration is irrational, unreasonable, mala fide or *de hors* the Act, it should be open to a Court to decide the question.

158. Dealing with the submission, the majority stated;

"Now whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the legislative competence of the State the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside for a moment the purpose of a company. ***If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power confirmed upon it by the Act and its declaration will be a nullity***".

(emphasis supplied)

159. The majority concluded;

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

(emphasis supplied)

160. In *Srinivasa Cooperative House Building Society Ltd. v. Madam Gurumurthy Sastry & Ors*, (1994) 4 SCC 675, this Court held that a token contribution from public revenue cannot *ipso facto* be treated as colourable exercise of power by the State in acquisition of land. Each case must furnish its backdrop whether the action is for public purpose or for a private purpose.

161. In *Bajirao T. Kote (dead) by LRs. & Anr. v. State of Maharashtra & Ors.*, (1995) 2 SCC 442, this Court held that satisfaction of the State Government regarding existence of public purpose is not open to judicial scrutiny unless there is *mala fide* or colourable exercise of power.

162. The Court stated;

"It is primarily for the State Government to decide whether there exists public purpose or not, and it is not for this Court or the High

Courts to evaluate the evidence and come to its own conclusion whether or not there is public purpose unless it comes to the conclusion that it is a mala fide or colourable exercise of the power. In other words the exercise of the power serves no public purpose or it serves a private purpose".

(emphasis supplied)

163. In *Laxman Rao Bapurao Jadhav v. State of Maharashtra*, (1997) 3 SCC 493, this Court held that it is for the State Government to decide whether the land is needed or is likely to be needed for a public purpose and whether it is suitable or adaptable for the purpose for which the acquisition was sought. The mere fact of empowering the authorized officer to inspect and find out whether the land would be adaptable for the public purpose does not take away the power of the Government to take a decision ultimately.

164. We may, however, recall *Daulat Singh* once again at this state. There, referring to all leading cases and dealing with the ambit and scope of judicial review on the satisfaction by the State Government on 'public purpose', this Court stated;

"Public purpose is bound to vary with times and prevailing conditions in the community or locality and, therefore, the legislature has left it to the State (Government) to decide what is public purpose and also to declare the need of a given land for the purpose. The legislature has left the discretion to the Government regarding public purpose. ***The Government has the sole and absolute discretion in the matter***". (emphasis supplied)

165. It was contended that the italicized portion quoted above (***The Government has the sole and absolute discretion in the matter***) is not in consonance with settled legal position or in accord with earlier decisions of this Court including decisions rendered by various

Constitution Benches. We have already referred to *R.S. Nanji* wherein before more than half a century, Constitution Bench of this Court held that ***prima facie***, the Government is the best judge to decide public purpose but ***it is not the sole judge***. That was the view of the Privy Council in *Hamabai*. Again, in *Somawanti*, the Constitution Bench held that in case of colourable exercise of power by the State Government or fraud on statute, the declaration under Section 6 is open to challenge, notwithstanding the 'finality clause' under sub-section (3) of the said section.

166. We would have indeed considered the contention of the learned counsel for the appellants closely in the light of earlier decisions of this Court. We are, however, of the view that on the facts and in the circumstances of the present case, the Government was right in forming an opinion and

reaching a satisfaction as to 'public purpose' and in initiating proceedings under Sections 4 and 6 and in invoking Part II of the Act. We, therefore, refrain from undertaking further exercise. In our considered opinion, it is not necessary for us to enter into larger question in view of 'fact situation' in the instant case.

Conclusions

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

168. As already adverted to earlier, the State of Andhra Pradesh in the background of

'World Tourism Organization Report' and 'Vision 2020 Document' took a policy decision for the development of the City of Hyderabad. For the said purpose, it decided to establish an Integrated Project which would make Hyderabad a major Business-cum-Leisure Tourism Infrastructure Centre for the State. The project is both structurally as well as financially integrated. It is to be implemented through Andhra Pradesh Infrastructure and Investment Corporation (APIIC) which has taken all steps to make Hyderabad a world-class business destination. APIIC is an instrumentality of State and works as 'Nodal Agency' developing the project which would facilitate socio-economic progress of the State by generating revenues, weeding out unemployment and bringing new avenues and opportunities for public at large. Development of infrastructure is legal and legitimate 'public purpose' for exercising power of *eminent domain*. Simply because a Company has

been chosen for fulfillment of such public purpose does not mean that the larger public interest has been sacrificed, ignored or disregarded. It will also not make exercise of power bad, mala fide or for collateral purpose vitiating the proceedings.

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

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

171. The entire amount of compensation is to be paid by State agency (APIIC) which also works as nodal agency for execution of the project. It is primarily for the State to decide whether there exists public purpose or

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

172. Taking the facts in their entirety, we are of the view that the action of the State in initiating acquisition proceedings for establishing and developing infrastructure project cannot be held contrary to law or

objectionable. The High Court was, therefore, right in dismissing writ petitions as also writ appeals and we find no infirmity therein. All the appeals, therefore, are liable to be dismissed and are accordingly dismissed, however, leaving the parties to bear their own costs.

.....J.
(C.K. THAKKER)

NEW DELHI,
SEPTEMBER 5, 2008.

.....J.
(D.K. JAIN)