

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1871 of 2012

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The Muzaffarpur Properties Private Limited Through Its Managing Director, Shri Amarnath Pandey Son Of Late Raghunath Pandey Resident Of Mohalla Muzaffarpur Town, Police Station - Muzaffarpur (Town), Distirct - Muzaffarpur

.... Appellant/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department Of Revenue and Land Reforms, Govt. Of Bihar, Patna
3. The Collector-Cum-District Magistrate, Patna
4. The Senior Superintendent of Police, Patna
5. The District Land Acquisition Officer, Patna
6. Dr. Mrs, Sahida Hasan Wife Of Azhar Hasan Resident Of Ramna Road, Near Sapna Apartment, Naya Tola, Patna

.... Respondent/s

With

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Letters Patent Appeal No. 1931 of 2012

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1. The State Of Bihar through the Chief Secretary Government of Bihar, Patna
2. The Principal Secretary Department of Revenue and Land Reforms, Government of Bihar, Patna
3. The Principal Secretary Department Of Industries, Government of Bihar, Patna
4. The Collector-Cum-District Magistrate, Patna
5. The Senior Superintendent of Police, Patna
6. The District Land Acquisition Officer, Patna

.... Appellant/s

Versus

1. The Muzaffarpur Properties Private Ltd. Through Its Managing Director, Shri Amar Nath Pandey S/O Late Raghunath Pandey R/O Mohalla- Muzaffarpur Town, P.S.- Muzaffarpur, Registered Office At- Kidwaipuri, P.S.- Buddha Colony, Town And District- Patna
2. Amar Nath Pandey S/O Late Raghunath Pandey R/O Mohalla- Muzaffarpur Town, P.S.- Muzaffarpur [Town & District - Muzaffarpur]

.... Respondent/s

With

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Letters Patent Appeal No. 444 of 2013

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Dr. Mrs. Shahida Hasan D/O Late Syed Hasan Ahmad Sami, W/O Sri Azfar Hasan R/O Ramnabagh, Naya Tola, Near Sapna Apartment, Police Station- Pirbahore, District- Patna

.... Appellant/s

Versus

- 1. The State Of Bihar through the Chief Secretary, Govt. Of Bihar, Patna
- 2. The Principal Secretary Department of Revenue and Land Reforms, Govt. Of Bihar, Patna
- 3. The Collector-Cum-District Magistrate, Patna
- 4. The Senior Superintendent of Police, Patna
- 5. The District Land Acquisition Officer, Patna

.... Respondent/s

With

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Letters Patent Appeal No. 1335 of 2013
IN
Civil Writ Jurisdiction Case No. 15635 of 2009

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- 1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
- 2. The Principal Secretary, Department Of Revenue and Land Reforms, Government of Bihar, Patna
- 3. The Principal Secretary, Department Of Industries, Government of Bihar, Patna
- 4. The Collector-Cum-District Magistrate, Patna
- 5. The Senior Superintendent of Police, Patna
- 6. The District Land Acquisition Officer, Patna
- 7. Bihar State Shia Wakf Board through its Chief Executive Officer, Patna

.... Appellant/s

Versus

The Muzaffarpur Properties Private Ltd. Throuh Its Managing Director, Shri Amar Nath Pandey Son Of Late Raghunath Pandey Resident Of Mohalla - Muzaffarpur Town, P.S. - Muzaffarpur, Registered Office At - Kidwaipuri, P.S. - Buddha Colony, Town And District - Patna

.... Respondent/s

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Appearance :
(In LPA No. 1871 of 2012)

For the Appellant/s :

Mr. Sanjay Singh with

Mr. Umakant Prasad

Mr. Sanjeev Kumar Singh.

For the Respondent/s No.7:

Mr. Shashank Shekhar Jha

For the State

Mr. Lalit Kishore PAAG

For the Intervener respondent.

Mr. S.S. Dwedi, Sr. Advocate.

For the Wakf Board

Mr. Syed Quaisar Hasan Advocate.

For the intervener respondent :

Mr. Khatim Raza Advocate.

(In LPA No. 1931 of 2012)

For the appellant:

Mr. Lalit Kishore, P.A.A.G.

For the respondent

Mr. Sanjay Singh with

Mr. Umakant Prasad

Mr. Sanjeev Kumar Singh.

For the Respondent/s No.7 :

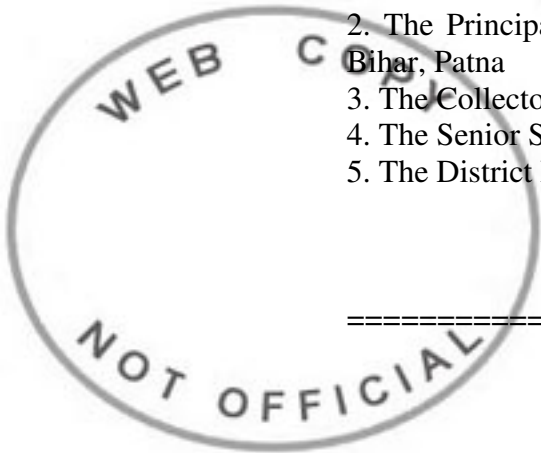
Mr. Shashank Shekhar Jha

For the Wakf Board

Mr. Syed Quaisar Hasan Advocate.

For the intervener respondent :

Mr. Khatim Raza Advocate



Draft

(In LPA No. 444 of 2013)

For the Appellant/s : Mr. K.B. Upadhayay
For the Wakf Board : Mr. Sayed Quaisar Hasan Advocate.
For the Respondent/Intervener : Mr. Khatim Raza Advocate.

(In LPA No. 1335 of 2013)

For the Appellant/s : Mr. Lalit Kishore ,Pr AAG
For the respondent: : Mr. Shashank Shekhar Jha
For the Wakf Board. : Mr. Syed Quaisar hasan Advocate.
For the Intervener : Mr. Khatim Raza Advocate.

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**CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT**

(Per: HONOURABLE THE CHIEF JU

Date: 28-04-2015

The subject matter of all these three appeals is the validity of acquisition of 3.14 acres of land on the Survey Plot no.121 in Ward No. 2 of Patna Municipal Corporation. A building named “Rizwan Palace” is situated in the said land, in the middle of Patna city.

2. The collector of Patna issued notification dated 10.12.2009 under section 4(1) of the land acquisition Act (hereinafter referred to as the Act) proposing to acquire the said land for a public purpose. The enquiry under Section 5A of the Act was dispensed with, in exercise of power under Section 17(1) of the Act. The notification under Section 6 of the Act was published on the same day.

3. M/s Muzaffarpur Properties Pvt Ltd. filed C.W.J.C. No. 9130 of 2011 before this Court challenging the



notifications. They pleaded that the property was purchased by them through sale deed dated 13.04.2006. Their main ground of attack was that the purpose mentioned in the notification under section 4(1) of the Act was not clear and proper, and the publication of notification under Section 6 of the Act was not as per the prescribed procedure.

4. Dr. Sahida Hassan, claims to be the Mutwali of the Wakf to the extent of 10 annas of the property. She filed C.W.J.C. No.19185 of 2011 challenging the notifications. In addition to pointing out the defects in the procedure, she raised further objection that the property vested in the Wakf Board and it could not have been acquired without the consent of the Wakf Board. The acquisition was justified by the State Government.

5. Both the writ petitions were heard, almost at the same time, however, by two different learned Judges of this Court. C.W.J.C. No. 9130 of 2011 was heard by Hon'ble Mr. Justice P.C. Verma and the writ petition was allowed through order dated 28.08.2012. The hearing of C.W.J.C. No. 19185 of 2011 took place a bit earlier and the matter was reserved for judgment. On 04.09.2012 Justice Seema Ali Khan dismissed the writ petition and issued certain directions as to

how the property must be developed after acquisition.

6. L.P.A. No. 1871 of 2012 is filed by the Muzaffarpur Properties Pvt. Ltd, against the judgment in C.W.J.C.No. 19185 of 2011. The State of Bihar filed L.P.A. No. 1931 of 2012 against the judgment in CWJC No. 9130 of 2011 and L.P.A. No. 1335 of 2013 against the judgment in C.W.J.C.No. 19185 of 2011. Dr. Shahida Hassan filed L.P.A. No. 444 of 2013 against the same judgment. Thus three appeals are filed against the judgment passed in C.W.J.C. No. 1918 of 2011 and one against the judgment in C.W.J.C. No. 9130 of 2011.

7. We heard the learned Principal Additional Advocate General for the State, the counsel for the Muzaffarpur Properties Pvt. Ltd, Dr. Mrs. Shahida Hassan and of various interveners who have filed applications in these appeals both on the facts and law. We have also perused the voluminous record placed before us.

8. The genesis and the manner in which the property of Rizwan Palace was acquired under a Trust then settled and the manner in which claims by various parties through succession or otherwise is mentioned in the judgment rendered in C.W.J.C. No. 9130 of 2011. We do not propose to repeat the same. It is also matter of record that there is



voluminous litigation in relation to the property obviously because it has acquired phenomenal value.

9. Whatever be the litigation in relation to the property, the Government has the power of eminent domain, to acquire the same if it is needed for the public purpose. The manner in which the power under different provisions of the Act is to be exercised has been explained by the Supreme Court from time to time.

10. One of the most important requirements is the existence of public purpose. It is only when the land is needed for public purpose, that power under the Act can be exercised. The purpose must be clear and not vague or abstract. Once the Government is clear about the public purpose and is of the view that a particular piece of land is needed to be acquired for that purpose, a notification is required to be issued under section 4(1) of the Act. Such a notification signifies the intention of the Government. Since the effect of the acquisition is going to effect, many persons including those claiming interest therein, it is required to publish the notification in the gazette, two news papers and in the locality. Once this formality is completed, an enquiry under section 5-A of the Act is required to be conducted. In a way, it can be said that it is

only in the enquiry contemplated under section 5-A of the Act that the persons interested in the land can put forward their contention, or ventilate their grievance,.

11. After the enquiry is conducted and report is submitted to the authority the State or any officer delegated with power has to form a final opinion as to whether the land must be acquired. For this purpose, he has to take into account, the objections that have been filed by the interested persons. The notification under section 6 of the Act is required to be published in accordance with the same procedure, that is applicable for the notification under section 4(1).

12. In case of extreme urgency, which cannot brook the delay that is caused in conducting the enquiry under Section 5-A of the Act, the power under section 17(4) of the Act can be invoked, to dispense with the enquiry. Time and again, the Supreme Court held that the emergency power under section 17(4) of the Act cannot be invoked indiscriminately. It is in this back ground that, the acquisition which is in challenge needs to be examined.

13. After hearing the learned counsel for the parties and on perusal of the record we do not find that there existed any specific public purpose for initiation of the





proceedings to acquire the land. Further, the initiation was not from the State. When the dispute of the land was under consideration by a Division Bench of this Court, it appears that an observation was made to the effect that the property can be acquired by the Government. No authority or department of the Govt. submitted any proposal for acquisition of the land. For example in M.J.C. No. 1348 of 2007, the learned single judge of this Court expressed the view that the property can be declared as ‘custodia legis’. The relevant portion of the order reads as follows:

“The arrangement made by the Court shall continue to be mentioned and implemented by the District Magistrate, Patna and if he feels any difficulty he may approach this Court by filing application. It is also made clear that we have purposely pointed out different title suit pending in the court so that interested persons in the property in question may, if so advised, pursue their remedy before the Civil Court and seek their right and enforcement of the same by obtaining order of the Civil Court in accordance with law. It is clarified that order for custodia Legis in the context of the case means an arrangement only to keep the property intact and not allow it to be alienated, destroyed or changed without orders of the Civil Court. It is further made clear that the Civil Court hearing the matters may put the property in possession of a proper receiver if any of the parties apply for the same and if such

course is found necessary and as per law”.

14. Referring to the proceedings in M.J.C. No. 1348 of 2007 and M.J.C. No. 1162 of 2007, the then Principal Additional Advocate General addressed a letter addressed to the Principal Secretary, Land Reforms Department, Govt. of Bihar Patna dated 30.07.2009 (Annexure-11) which reads as follows:

“A very valuable property popularly known as ‘Rizwan Place’ is Wakf property. However unscrupulous elements having greedy eye over the property have tried to grab it by one or other means. Several persons are claiming to be owner of the property. Several conveyances appear to have been created transferring the property in favour of one or the other person.

Various claimants and other transferees have created lot of controversy both for the administration and also for the Courts. Large number of cases In Patna Civil Court, Patna High Court and other Courts are pending between different set of petitioners/ opposite parties.

Above referred two cases appertains to the same property and is pending in Patna High Court.

In course of hearing of above referred cases by a Division Bench comprised of Hon’ble Mr. Justice S.K.Katariar and Hon’ble Mr. Justice Jyoti Saran, having regard to the importance of the valuable



property and considering its location and its utility for public purpose, the court felt that if the State Government does not intervene , unscrupulous elements by one or the other means may squander the property. The Court, at this stage has not passed any order, however, in course of hearing has observed that the State Government may apply and if finds that property can be put to better use for public purpose and it does not cause financial or other constraints. it /may consider acquiring the property under emergency provision in public interest. In course of hearing, the Hon'ble Court has made it clear that if State decides to acquire the property for putting it for better use, the Court may consider issuing such direction as maybe required in public interest for acquisition of the property.

Apart from the observation of the Court, as the Advocate General and also domicile of this State, I feel that the property can be better utilized for any public use rather than allow it to be grabbed by greedy persons by resorting to unscrupulous means.

In view of above, you are requested to examine the feasibility of acquiring the property and make an assessment of value and in case proposal finds favour with the State Government, I may be apprised so that appropriate direction may be sought from the Hon'ble Court. The case is coming up for further hearing on 24.08.2009.

This may be taken up on priority and urgent

basis.”



This was followed by the letter of the Deputy Secretary, Industries Department, Govt. of Bihar, dated 19.10.2009 addressed to the District Collector, Patna. The two letters dated 19.10.2009 and letter dated 10.12.2009 has been annexed as Annexures 15 and 16. In both of them he indicated that the land needs to be acquired. For better appreciation of the letter, both the letters, filed as Annexures 15 and 16, are reproduced:

LAND ACQUISITION SECTION

Letter No. 5/S Land Acquisition (Rizwan Palace) 3/2009

Patna Dated 19.10.2009

From,

The Deputy Secretary,
Industries Department,Bihar, Patna.

To

The Accountant General, Bihar, Patna.

Sub: With regard to administrative sanction for Land Acquisition of the land of ‘ Rizwan Palace’ and its premises situated near Daak banglow Frazer Road, under Patna District.

Sir,

As per direction with regard to the above subject the land of Rizwan Palace with its premises 3.15 acre land is being acquired and sanctioned accordingly.

S.No.	Village	Anchal	Thana No.	Area(in acre)
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1.	Mohimpur	Patna Sadar	137	3.15
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This land after its acquisition will be allotted to different public purposes necessity such as institutions, convention centre, tourist and for other development.

The total cost of this construction made by the development authority Patna, and total amount will be deposited in the treasuries in the name of Land Acquisition Officer by the District Officer Patna. In case of increment in the compensation of this land the said amount will be spent in the development of Patna Development Authority.

The budget of the said amount will be in the head 4885 of Industries and Mines Department and for development of the backward area and minor head-800 and other expenditure, demand No. 23, head -0101 for the development of Industries and Land Acquisition its Code PO-4885028000101, title head 4201 in one installment will be spent out of the sanction amount.

Sincerely yours.

Deputy Secretary \Industries Department, Bihar, Patna.

Memo No.

Patna , Dated.

Copy to

Mrs. Purti (Director Industry), Industry Department, Bihar, Patna for information and necessary action.

Sd/-

Deputy Secretary
Industry Department,
Bihar Patna.
Memo No. 4320-
Patna Dated 19.10.09

Copy forwarded to ;

District Officer, Patna /District Land Acquisition Officer, Patna
for information and necessary action.

Sd/-
Deputy Secretary
Bihar, Patna.

This gave rise to the issuance of notification under
section 4(1) of the Act. It reads,

Department of Revenue and Land Reforms
(Land Acquisition Department)
Notification Patna dated 10.12.2009.

Ref: - 14/DLA Industry-Patna-15/09-1311)

Because it appears necessity to the Government
of Bihar to acquire the land situated in village Mohimpur,
Thana No. 137, Ward No.2 Seat No.20, Pargana Phulwari P.S.
Kotwali-137 District Patna for Development of different public
purposes, such as Public Institutions, Conventions Centre,
Tourist purposes, and other development on the Government
cost.

Therefore, it is notified by the Government that the
said land of village Mohimpur Thana No. 137 Ward No. 2 Seat
No. 20 and its premises within which is in about 3.149 acre
whose survey Plot No. 121 with the following boundary”

North	Plot No. 120, 122 and 123
East	Zamal Road,
South	Municipal Seat No. 19
West	Frazer Road, Patna.

This notification is being made for the concerted
persons were connected with this land under Act.1, 1894 section
4 amended by Bihar Act, 11 year 1961.

The map of the acquisition land may be seen in

the office of Land Acquisition Office Patna. The Land Acquisition Officer Patna and its employees and is concerned persons, Deputy Secretary Industries Department are authorized by the Bihar Government to go on the land and make its survey and do the necessary works as prescribed in section 4(2) and other directions.

By utilizing the power u/s 17(4) of the Act, Government of Bihar have decided not to enforce section 5 of the Act, until the schemes are being completed.

Collector, Patna
By the order of Governor , Bihar.
Sd/-
Mahipal Singh Yadav
Deputy Secretary to the Government.

15. Our attention is not invited to any proposal that has emanated from the P.R.D.A. That agency is the creation of statute and its decisions are required to be taken, not only in accordance with the prescribed procedure, but also with the approval of the State Government.

16. The purpose mentioned in the notification under section 4(1) of the Act on 10.12.2009. is “ for public purpose such as for establishment of institutions creation of conventions centre, tourist purposes and other development at the Government cost”. As regards the invocation of urgency clause, it was mentioned that by utilizing the power under section 17(4) of the Act the Government of Bihar has decided

not to enforce section 5 of the Act, until the things are being completed. This was followed by a declaration under section 6 of the Act published on the same day by mentioning the same purpose.

17. First we have to examine whether the purpose mentioned in publication can be treated as public purpose, contemplated under the Act. The Supreme Court held that the purpose for which the land is proposed to be acquired under the Act, must be specific and clear.

18. In *Aflatoon V. Lt. Governor, Delhi* (AIR 1974 SC 2077), the Hon'ble Supreme Court held,

“Section 4 of the Act says that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. According to the section, therefore, it is only necessary to state in the notification that the land is needed for a public purpose. The working of section 5A would make it further clear that all that is necessary to be specified in a notification under S. 4 is that the land is needed for a public purpose. One reason for specification of the particular public purpose in the notification is to enable the person



whose land is sought to be acquired to file objection under S. 5A. Unless a person is told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition under S. 5A. This Court has laid down that it is necessary to specify the particular public purpose in the notification for which the land is needed or likely to be needed as, otherwise, the matters specified in sub-section (2) of Section 4 cannot be carried out. In Munshi Singh v. Union of India, (1973) 1 SCR 973 at pp. 975 and 984 = (AIR 1973 SC 1150 at p. 1154) the Court said : “It is apparent from sub-section (2) of S. 4 that the public purpose which has to be stated in sub sec. (1) of Section 4 has to be particularized because, unless that is done, the various matters which were mentioned in sub-section (2) cannot be carried out and if the public purpose stated in Section 4(1) is planned development , without anything more, it is extremely difficult to comprehend how all the matters set out in sub-section (2) can be carried out by the officer concerned.”

19. From the notification, it becomes clear that in the present case the concerned authority was not clear in its mind as to for what purpose the land is proposed to be acquired. Obviously to cover up the lack of clarity, the power to dispense with enquiry was utilized for a purpose other than what it was meant for. Reference in this context may be made in the

judgment of the Supreme Court 1985 Vol.3 (Raja Ram Jaiswal Vs. Collector (District Magistrate) Allahabad and another 1985 (3) SCC page

20. The second aspect is as to whether there was justification or occasion to remove the urgency clause under section 17(4) of the Act in this case. It has already been observed that the only protection for a citizen against the compulsory acquisition of the land under the Act is to make representation in an enquiry under section 5(A) of the Act. Though the authority who conducts the enquiry may not agree with the contention of the owners or the persons interested in the land, the observations would serve the purpose at a subsequent stage. Such a right cannot be denied by the authority conferred with power to acquire the land. The power under section 17(4) can be invoked only in rare and exceptional cases, such as where the land is needed for establishment of facility for the victims in a natural calamity. When there was not even a proposal from the P.R.D.A. for acquisition of the land, it is just understandable as to why the urgency clause under section 17(4) was invoked. The Hon'ble Supreme Court held that the improper invocation of urgency clause would vitiate the proceeding.

21. In Union of India and others v. Mukesh Hans

{(2004) 8 SCC 14} Hon'ble Supreme Court observed :

“35. At this stage, it is relevant to notice that the limited right given to an owner/person interested under Section 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed under Section 17(4) of the Act. The object and importance of Section 5-A inquiry was noticed by this Court in the case of Munshi Singh v. Union of India (AIR 1973 SC 1150 Para 7) wherein this Court held thus :

“7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made.....The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section

5-A”



22. Thirdly, the method of publication of notifications under section 4 and 6 is clearly specified under the Act. The notification under section 4(1) is required to be published (a) in the gazette (b) in a news paper and (c) in the locality. The declaration under section 6 of the Act is required to be published in similar manner, after considering the report, if any, under section 5(A) of the Act. Even where the inquiry under section 5(A) is dispensed with the occasion to publish the notification under section 6 of the Act would arise only when the publication of notification under section 4(1) is complete in all respects. It is brought to our notice that notification under section 4(1) of the Act was published in the gazette after it was published in the news paper. This leads to serious infirmity, for the reason that the publication in the news paper must be done after the one in the gazette. Even if there was no serious infirmity, in this behalf it is evident that the notification under section 6(1) was published in the gazette on 10.12.2009 itself much before publication of the notification under section 4(1) was completed. The net result is that there is serious infirmity in the proceeding at various stages.

23. It is stated that the cost of the land is in

hundreds of crores. One can imagine the amount to be paid towards market value, solatium etc., and the claims that may be made in future. There are many claimants in this case.

24. Under these circumstances, we are left with no alternative except to hold that the procedure adopted by the State does not accord with law, as enacted or interpreted. We therefore, allow the L.P.A. No. 1871 of 2012 and L.P.A. No. 444 of 2013 and the judgment in C.W.J.C. No. 19185 of 2011, and L.P.A. No. 1335 of 2013 and L.P.A. No. 1931 of 2012 are dismissed. It is left open to the State to acquire the land if it is otherwise inclined to.

25. Most of the interlocutory applications are filed by the parties projecting their rights in the land in question. We do not propose to touch any of them. It is left open for them to approach the appropriate forum to work out their rights.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

A.F.R.
Rahman/Manish

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