

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WA.No. 1464 of 2015 ()

AGAINST THE JUDGMENT IN WP(C) 3011/2010 DATED 20-05-2015

APPELLANT/PETITIONER IN WP(C) :

**JAYA BALAGANGADHARAN
R-7, JAI NAGAR, MEDICAL COLLEGE P.O.
THIRUVANANTHAPURAM-11.**

**BY SENIOR ADVOCATE SRI.N.SUKUMARAN
BY ADVS.SRI.S.SHYAM
SRI.N.K.KARNIS
SRI.BOBBOY MATHEW KOOTHATTUKULAM
SRI.KURUVILLA JOHN**

RESPONDENTS/RESPONDENTS IN WP(C) :

- 1. THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 2. THE SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 3. THE DIRECTOR OF MINING AND GEOLOGY,
DIRECTORATE OF MINING AND GEOLOGY
THIRUVANANTHAPURAM-695 004.**
- 4. THE SPECIAL TAHSILDAR (LAND ACQUISITION),
SREE PANDARAVAKA LANDS NO.3
CIVIL STATION, KUDAPPANAKUNNU
THIRUVANANTHAPURAM- 695043.**
- 5. THE KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR, KESTON ROAD
KOWDIAR, THIRUVANANTHAPURAM-695 003.**

6. SHRI. P.H. KURIAN, FORMER M.D., KSIDC,
CONTROLLER GENERAL OF PATENTS, DESIGNS AND TRADE MARKS,
BAUTHIK SAMPTH BHAVAN, S.M.ROAD
ANTOP HILL, MUMBAI-400 037.

7. THE DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION, KUDAPPANAKUNNU
THIRUVANANTHAPURAM- 695001.

8. UNION OF INDIA,
REPRESENTED BY SECRETARY, MINISTRY OF MINES
SASTRI BHAVAN, NEW DELHI- 110 001.

9. THE LAND REVENUE COMMISSIONER,
CIVIL STATION, KUDAPPANAKUNNU
THIRUVANANTHAPURAM- 695043.

R1 TO R4, R7 & R9 BY SR.GOV'T. PLEADER SRI. C.R. SYAMKUMAR
R5 BY SENIOR ADVOCATE SRI. M. PATHROSE MATHAI
BY ADVS. SRI.SAJI VARGHESE, SC
SMT.MARIAM MATHAI
R8 BY ADVS. SRI.N.NAGARESH, ASGI
SRI.GIRISH KUMAR V., CGC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 31-08-2015, ALONG
WITH WA NO. 1555/2015 & CONNECTED CASES, THE COURT ON 03-11-2015
DELIVERED THE FOLLOWING:

Mn

...3/-

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APPENDIX

PETITIONERS' ANNEXURES :

**ANNEXURE AI : COPY OF THE LETTER DATED 17.8.2015 ISSUED BY THE 4TH
RESPONDENT TO SMT. MANJU BALAGANGADHARAN.**

ANNEXURE A1(a) ENGLISH TRANSLATION OF ANNEXURE AI.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

ASHOK BHUSHAN, C.J.

“C.R.”

&

A.M. SHAFFIQUE, J.

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Dated this, the 3rd day of November, 2015

J U D G M E N T

Shaffique, J.

These appeals are filed against common judgment dated 20/5/2015 in a batch of writ petitions, by which the learned Single Judge dismissed the writ petitions, which challenged notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred as the 'LA Act') and further proceedings pursuant to the same. Hence, the appeals are heard and decided together.

2. The facts involved in the above writ petitions disclose that a common notification dated 30/5/2008 under Section 4(1) of the LA Act was published in Kerala Kaumudi daily on 2/6/2008, for acquisition of 250 acres of land in different survey numbers forming part of Veiloor Village, Thiruvananthapuram. The purpose of acquisition was for setting up of a “Life Science Park” for Kerala State Industrial Development Corporation (hereinafter referred as the Corporation). In WA No. 1464/2015 which arises from W.P.(C)

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No. 3011/2010, a separate Section 4(1) notification was published on 3/10/2008. Enquiry was conducted under Section 5A of the LA Act and thereafter declaration under Section 6 of the LA Act has been published on 23/11/2009.

3. The petitioners/appellants raised common contentions. For easy reference, we are referring to the documents as described in W.A.No.1555/2015 which arises from W.P.(C) No. 25679/2008, unless otherwise stated.

4. It is contended that there was no sanction from the Government to acquire land for the purpose of the Corporation, the Government order only permitted negotiated purchase and not acquisition under the LA Act, that the action of the Corporation in acquiring land without proper permission from its Board and Government is malafide and a colourable exercise of power, that Section 4(1) notification was published without any authority as the Special Tahsildar (Land Acquisition), Pandaravaka Lands, was not competent to issue such a notification, that the proceedings are actuated by fraud, that the objections raised during Section 5A enquiry were not considered properly and the findings of the Land Revenue Commissioner do not disclose

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particulars of the objections raised by the petitioners and that the declaration under Section 6 of the LA Act is beyond 1 year from the date of publication of Section 4(1) notification.

5. The respondents namely State and the Corporation filed counter affidavits controverting the above contentions. The learned Single judge after a detailed evaluation of the factual and legal issues raised in the writ petitions, dismissed the writ petitions, against which these appeals are filed.

6. Heard learned senior counsel Sri.N.Sukumaran and Sri.N.N.Sugunapalan, learned counsel Sri.S.M.Prem, Sri.G.S.Reghunath, Sri.P.B.Krishnan and Smt.M.Hemalatha appearing on behalf of the appellants/writ petitioners, learned Senior Government Pleader Sri. Syamkumar appearing on behalf of the State and its authorities and Sri.Pathrose Mathai, learned senior counsel appearing on behalf of the Corporation.

7. The following are the contentions urged on behalf of the appellants:

(i) That there is no sanction from Government to acquire land by invoking the provisions of LA Act. Exhibit P5 is the resolution of the Board of Directors of the Corporation. The

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agenda item was to consider land aquisition for setting up an Integrated IT park cum township. The Board was informed about Government order dated 20/11/2006 by which it was decided to constitute a Public Limited Company on the model of CIAL for development of industrial parks and townships, in which Government and Government companies will hold 26% shares. The Board having noticed that the company is yet to be incorporated, decided to acquire 250 acres of land near Trivandrum on its own name and with its own funds, and when the Company is formed, the land can be transferred to the said company for setting up an Integrated IT corridor. The Board approved proposal for acquisition of the said 250 acres of land through negotiated purchase with the specific approval of Government. The Corporation by letter dated 22/1/2007, (Ext.P6) addressed the Principal Secretary to Government and sought for approval for acquisition of 250 acres of land at Trivandrum to be converted into the Life Science Park as proposed in the draft industrial policy. Reference is made in the said letter to the Board meeting held on 29/12/2006. Exhibit P7 dated 5/12/2007 is the permission granted by Government to the Corporation to acquire

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land for Life Science Park on certain conditions. The conditions attached to the said permission are (i) when land is taken over by negotiation, it has to be ensured that reasonable value (market value) has to be paid. (ii) a rehabilitation package is to be prepared for those who are deprived of their residential houses. (iii) a scheme has to be framed for providing job to atleast one member of such families. (iv) that the Corporation shall use their own funds which are allocated in the budget. Exhibit P8 is another Government order dated 15/1/2008 by which it was mentioned that since the survey number and other particulars were not mentioned in Government order dated 5/12/2007, the particulars of land are mentioned in the Annexure and acquisition is permitted under the very same conditions stated in the said Government Order. Based on these documents it is contended that the Corporation in its Board decision did not decide to acquire land for Life Science Park, whereas the proposal before the Board was to acquire land for Integrated IT park and that too to be transferred to a company to be formed later in which the Government or Government companies will have only 26% shares. It is contended that the Board of Directors of the

Corporation never contemplated to acquire land for a Life Science Park and no other decision has been brought to the notice of the Court to indicate that the Corporation had taken a decision in the matter. Further when a request was made by the Corporation to the Government, the change in the purpose of acquisition was not mentioned and when the Government granted sanction to acquire land, permission was granted only to acquire land by negotiated purchase and not by resorting to the procedure under the LA Act. Therefore Section 4(1) notification was without any authority or sanction from the Government.

(ii) That acquisition is not for the purpose of Corporation, whereas the intention is to assign the acquired land to another company, which is yet to be formed, in which Government or Government companies have only 26% shares. Hence the Corporation which is indulging in real estate activities is utilising the provisions of the LA Act to acquire the land. It is argued that there is no reasonable explanation in the counter affidavit regarding the manner in which the land will be utilized after the acquisition. In so far as the proposed project is not clear, there is no reason why acquisition proceedings should be initiated.

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Therefore acquisition proceedings amounts to colourable exercise of power.

(iii) That the publication of Section 4(1) notification is without authority. It is argued that the Special Tahsildar (Land Acquisition), Pandaravaka Lands, was not authorised to issue Section 4(1) notification, as he was not duly authorised to issue the notification. Reference is made to Exhibit P16 dated 12/11/2009 by which the Land Revenue Commissioner had addressed the District Collector indicating that the Special Tahsildar (Land Acquisition), Pandaravaka is appointed as Land Acquisition Officer (LAO) for acquisition of land for Techno-city in terms of notification dated 6/6/2007. It was observed that no notification was issued appointing the said Tahsildar as LAO for the present proceedings. Further reference is made to letter dated 19/11/2009 issued by the District Collector to the Principal Secretary to Government, referring to the letter dated 12/11/2009 of the Land Revenue Commissioner requesting the Government to take necessary steps to clarify the queries raised by the Land Revenue Commissioner, as the time for publication of Section 6 declaration is nearing. It is argued that the Special Tahsildar not

being appointed for the aforesaid acquisition had no right to publish Section 4(1) notification under the LA Act and hence the same is *ab initio* void.

(iv) In Exhibit P17 letter dated 19/11/2009 issued by the District Collector to the Principal Secretary to Government there is reference made to proceedings of District Collector dated 25/7/2008. It is argued that when sanction to acquire land had been given only on 25/7/2008, the notification under Section 4(1) is published in the newspaper on 2/6/2008, which clearly amounts to malafides.

(v) That fraud has been committed by the requisitioning authority as well as the Governmental authorities. The contention is that the Managing Director of the Corporation has misled the District Collector and had made him accept Ext.P32 requisition for acquisition of land in terms with LA Act. The Special Tahsildar, Sree Pandaravaka lands being not competent to acquire land, refers to Government orders which permits only acquisition by way of negotiated purchase and has thereby committed fraud in issuing Ext.P11 notification. Yet another ground taken is that by issuing a corrigendum on 26/10/2009, Special Tahsildar, had no

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authority as by the said time he had submitted a report to the Land Revenue Commissioner as early as on 13/10/2009.

(vi) That enquiry under Section 5A of the LA Act was violating the principles of natural justice. It is argued that though specific objections had been filed by the petitioners, there was absolute non consideration of the same. The appellants in WA No.1555/2015 submits that they have submitted Exts.P24 and P25 objections. The notice for hearing was received only after the date fixed for hearing. A revised notice was issued fixing the date of hearing on 23/6/2009 on which date the appellant submitted written objections. It is argued that the objections given on 23/6/2009 do not form part of the report prepared by the LAO. It is therefore argued that failure to consider the objection amounts to violation of the principles of natural Justice as mandated under Section 5A of the LA Act.

(vii) That the Land Revenue Commissioner did not approve the draft declaration as evident from Exhibit P16 and there was no material to suggest that subsequently he had approved the draft declaration.

(viii) That the declaration published under Section 6 is

beyond the time specified under the LA Act. It is argued that when the public notice of substance of the notification under Section 4 (1) was published in the locality on 11/11/2008, the declaration made on 23/11/2009 is beyond the time specified under Section 6 (2) of the LA Act.

(ix) That most of the lands were utilised for mining purpose, which by itself is an industrial activity and hence acquisition for another industrial purpose is unnecessary and such lands ought to have been excluded.

8. Learned Government Pleader however in support of the stand taken by the Land Acquisition Authorities, supported the judgment of the learned Single Judge. The learned senior counsel Sri.Pathrose Mathai also supported the stand taken in the matter.

9. Sri.S.M.Prem, learned counsel took us through the entire facts and circumstances involved in the case and contended that the notification under Section 4(1) was *ab initio* void and that the enquiry under Section 5A of the LA Act was a farce. He relied upon the following judgments of the Supreme Court to lay emphasis on the contention regarding non application of mind in conducting enquiry under Section 5A and thereby violating the

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principles of natural justice.

(i) **Surinder Singh Brar and Others v. Union of India and ors** (2013 (1) SCC 403).

(ii) **Raghubir Singh Sehrawat v. State of Haryana** (2012 (1) SCC 792).

(iii) **Hindustan Petroleum Corporation v. Darius Shapur Chenai and others** (2005 (7) SCC 627).

10. Sri.G.S.Reghunath placed reliance on the judgment of the Supreme Court in **Indian Bank v. Satyam Fibres (India) Pvt. Ltd** (1996 (5) SCC 550) and **A.V.Papayya Sastry and Others v. Government of A.P. and others** (2007 (4) SCC 221) to contend that fraud has been committed by the requisitioning authority as well as the Governmental authorities. **Padma Sundara Rao and Others v. State of T.N. and Others** (2002 (3) SCC 533) has been relied upon to emphasise the purpose and requirement of Section 6 declaration. It is held that Courts should not place reliance on decisions without discussing whether the factual situation fits in with the fact situation of the decision on which reliance is placed.

11. Learned counsel Sri.P.B.Krishnan placed reliance upon

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the judgment in **Ramji Veerji Patel and others v. RDO and others** (2011 (10) SCC 643) to contend that Section 5-A of the Act confers a valuable right on the person interested in any land which has been notified under Section 4(1) as being needed for a public purpose or likely to be needed for public purpose is beyond doubt. By this right, the owner/person interested may put forth his objections not only in respect of public purpose but also the suitability of the acquisition in respect of his land. Yet another judgment relied upon is **Competent Authority v. Barangore Jute Factory and others** (2005 (13) SCC 477). This was a case relating to acquisition of land for National Highway and while balancing the equities on a finding that the notification had lapsed, Supreme Court held there are precedents by way of judgments instead of quashing the impugned notification, the Court shifted the date of the notification so that the landowners are adequately compensated. This case apparently can have application only when equities are worked out in a given case, if it is found that there is irregularity in the process of acquisition. He also placed reliance upon the judgment of the Supreme Court in **Anitha Jose v. State of Kerala** (2011 (3) KLT 538) to contend

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that if award is not passed within two years from the date of publication of declaration, the entire proceedings of acquisition will lapse.

12. Sri.N.Sukumaran, learned counsel relied upon the judgment of the Supreme Court in ***M/s V.K.M.Kattha Industries Pvt. Ltd. v. State of Haryana.*** (Civil appeal No.6792/13.) In the said case, Supreme Court observed that when the appellant company is running an industry which is similar to the purpose for which lands were being acquired, such lands ought to have been excluded from acquisition. It was also observed that even if the Government or the authority concerned excludes the lands of the appellant company, there would not be any difficulty in executing this deed. The judgment is relied upon by the learned counsel to contend that the land of the appellant in WA No.1464/15 having an extent of around 10 acres was being utilized for mining clay and the situation of the land was in such a way that it could have been excluded. He also relied upon the Industrial and Commercial Policy of the Government of 2007 to emphasise the fact that mining is one among the key initiatives that the Government is exploring when mineral activities for iron

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ores, high grade clay, bauxite and other minerals are to be streamlined and strengthened, there is no reason why land which was having high mineral content are being utilized for other purposes. He also placed reliance on the judgment of the Supreme Court in ***Thresiamma Jacob v. Geologist, Department of Mining and Geology*** (2013 (3) KLT 275) to emphasise the fact that the right in respect of the minerals vests in the owner of the property.

13. Sri.N.N.Sugunapalan, learned senior counsel appearing on behalf of the appellant in WA No.1565/15 while reiterating the contentions urged on behalf of the appellants relied on the Supreme Court judgment in ***Bangalore City Co-operative Housing Society Ltd. v. State of Karnataka and Others*** (2012 (3) SCC 727). It is contended that the expression “public purpose” contained in Section 3(f) is inclusive. That was a case in which question was whether land required for carrying out educational, housing, health or slum clearance scheme by a registered society or a Co-operative Society can be regarded as an acquisition for public purpose. It was held that if the acquisition of land is for a Co-operative Society which is covered

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by the definition of term 'company' as defined under Section 3(e), and is for a purpose other than for public purpose as defined under Section 3(f), then the provisions of Part VII would be attracted. This judgment has no application to the facts involved in the present case as the acquisition of land is for a Corporation controlled by the Government in which Part VII of the Act has no application. Another judgment relied upon is **B.Anjanappa and Others v. Vyalikaval House Building Co-operative Society Ltd and others** (2012 (10) SCC 184). This judgment is also relied upon to emphasise the strict adherence of the mandatory condition precedent for exercising power of acquisition of land for Housing Society. Yet another judgment is **A.U.Kureshi v. High Court of Gujarat and another** [(2009) 11 SCC 84]. This judgment is relied upon to emphasise the principle of bias. The principle of law is that a person should not be a judge in his/her own cause and failure to adhere to the said principle creates an apprehension of bias and what was required under the circumstances was to create a reasonable apprehension in the mind of others that there is no likelihood of bias affecting the decision. This judgment is relied upon to contend that the

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requisitioning authority as well as the sanctioning authority was biased or that there was likelihood of bias.

14. Learned counsel Smt.M.Hemalatha while adopting the arguments of the other appellants disputed the fact that an award has been passed in her case (W.A.No.1527/2015).

15. The learned Government Pleader placed reliance on the following judgments:

(i) **Venkitaswamappa v. Special Deputy Commissioner (Revenue)** (1997 (9) SCC 128) is relied upon by the learned Government Pleader to contend that if there is any order from the Court which prevents continuation of acquisition proceedings, the said period is liable to be excluded from the limitation prescribed under Section 6(1)(ii) of the LA Act. Para 7 is relevant, which reads as under;

“7. It is then contended that since the limitation period of one year from the date of the publication under Section 4(1) had elapsed and the stay granted by the High Court or this Court was only of dispossession of the appellants from the lands, the notification under Section 4(1) now stands lapsed by Explanation 1 to proviso to Section 6(1). We find no force in the contention. It is seen that the writ petitions came to be filed in March 1989 in the same month in which the substance of the publication of the notification under Section 4(1) was made and

the proceedings were pending before the learned Single Judge, the Division Bench and in this Court. Under these circumstances, the entire time taken from the date of the filing of the writ petitions till the date of the receipt of the order of this Court stands excluded and the limitation of one year would start thereafter only. Accordingly, we hold that the notification under Section 4(1) has not lapsed. It is now on record that the appellants have already filed their objections; enquiry under Section 5-A was conducted and report obviously must have been furnished to the Government for taking further steps in the matter. It would, therefore, be necessary for the Government to consider the objections and have the declaration under Section 6 published, if the Government is of the opinion that the public purpose still subsists."

(ii) In ***State of Kerala and ors. v. Antony Fernandez*** (1998) 3 SCC 556), the Supreme Court considered the scope of enquiry under Section 5A as well as the plea of limitation. Para 7 is relevant, which reads as under;

"7. At the first blush the said argument appears to be having substance. But on a closer scrutiny we find that it cannot be sustained. The reason is obvious. Explanation 1 to Section 6 is couched in very wide terms. It states that the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4(1) is stayed by an order of a court that period is to be excluded. It is not disputed that the proceedings under Section 5-A is also pursuant to Section 4(1) notification. Secondly the direction of the Court is that possession should not be taken till enquiry under Section 5-A is

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held and objections are considered which would amount to stay of further proceedings pursuant to Section 4 notification after Section 5-A enquiry. It was obviously an order of the competent court. It has been held by this Court vide Sangappa Gurulingappa Sajjan v. State of Karnataka; Govt. of T.N. v. Vasantha Bai and Venkataswamappa v. Special Dy. Commr. (Revenue) that even stay of dispossession granted by the Court while considering challenge to Section 4(1) notification would amount to stay as contemplated by Explanation 1 to Section 6. Consequently, it has to be held that the period during which there was stay of dispossession, i.e., from 2-7-1993 to 18-1-1994 amounting to almost 6 months is to be excluded and consequently, issuance of Section 6 notification on 20-5-1994 cannot be said to be beyond the permissible period as per Explanation 1 to Section 6. The first contention raised by Shri Poti, learned Senior Counsel for the appellants, therefore, has to be accepted. It is held that the High Court had erred in taking the view that Section 6 notification was beyond the permissible period of one year as contemplated by Section 6. In view of the aforesaid conclusion of ours the wider question whether the period of one year is to be considered in the light of date of Section 6 notification, i.e., 20-5-1994 or its publication in the Gazette on 8-6-1994 would pale into insignificance and it is not necessary for us to consider that wider question".

(iii) In **Yusufbhai Noormohmed Nendoliya v. State of Gujarat** (1991 (4) SCC 531), Supreme Court considered the explanation to Section 11A and it was held at paras 6 to 8 as under;

“6. The submission of learned counsel for the appellant is that in the present case the notification under Section 6 of the said Act was published in June 1988 and, as the award under Section 11 was not made by the Collector within a period of two years from the date of the publication, the entire proceedings for the acquisition of the land lapsed. In connection with the Explanation to Section 11-A it was submitted by learned counsel that by the said Explanation the only period excluded in computing the aforesaid period of two years is the period during which any action or proceeding taken in pursuance of the said declaration under Section 6 up to the stage of Section 11, namely, up to the making of the award under Section 11 was stayed by the order of a competent court. It was submitted by him that the question of taking possession would arise after making the award under Section 11 and merely because a landholder obtained an injunction restraining land acquisition authorities from taking possession that would not serve to exclude any time from the aforesaid period of two years within which the award must be made.

7. In support of his contention learned counsel for the appellant relied upon the judgment of a learned Single Judge of the Kerala High Court in S. Bavajan Sahib v. State of Kerala. In his judgment the learned Single Judge has taken the view that the action or proceeding contemplated by the Explanation to Section 11-A of the said Act is any action or proceeding to be taken after the making of the declaration under Section 6 and before the passing of the award under Section 11. Such actions are those contemplated by Sections 7 to 10. The question of taking possession of the land arises only when the award is passed under Section 16 of the said Act except in cases of emergency covered under Section 17. It was pointed out by the

learned Judge that the case before him was not a case in respect of which Section 17 was applicable and hence, unless there was a stay of the proceedings contemplated by Sections 7 to 10 or of further proceedings pursuant to the declaration under Section 6 the Explanation will not operate so as to extend the period of two years prescribed by Section 11-A. We find ourselves unable to agree with the view of the learned Single Judge of the Kerala High Court in the aforesaid judgment. In the Explanation to Section 11-A of the said Act which prescribes the period which is to be excluded, the expression used is —

“the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court”

(emphasis supplied)

8. The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings preceding the making of the award under Section 11 of the said Act. In the first place, as held by the learned Single Judge himself where the case is covered by Section 17, the possession can be taken before an award is made and we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon whether the case is covered by Section 17 or otherwise. On the other hand, it appears to us that the Section 11-A is intended to confer a benefit on a landholder whose land is acquired after the declaration under Section 6 is made in cases covered by the Explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the landholder. In order to get the benefit of the said

provision what is required, is that the landholder who seeks the benefit must not have obtained any order from a court restraining any action or proceeding in pursuance of the declaration under Section 6 of the said Act so that the Explanation covers only the cases of those landholders who do not obtain any order from a court which would delay or prevent the making of the award or taking possession of the land acquired. In our opinion, the Gujarat High Court was right in taking a similar view in the impugned judgment”.

(iv) Reference is also made to Constitution Bench judgment in **Somawanti v. State of Punjab** (AIR 1963 SC 151). Para 36 is relevant, which reads as under;

“36. 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 conferred upon it by the Act and its declaration will be a nullity. Subject to this

exception the declaration of the Government will be final."

(v) Reference is made to **Ajay Krishan Shinghal v. Union of India** (1996 10 SCC 721) which highlights the fact that Section 4(1) notification is not vitiated on account of the fact that planned development was not specified with particularisation of the land needed for public purpose or that the details of the proposed development were not given up. Paras 6 and 7 are relevant, which read as under;

"6. In view of the diverse contentions, the first question that arises for consideration is whether the land in question is needed for a public purpose? If the finding is held against the State, it would not be necessary to go into the second question. "Public purpose" has been defined in Section 3(f) of the Act with an inclusive purpose of various developments and extension, planned development and improvement of the village etc. The controversy is no longer res integra. In Aflatoon v. Lt. Governor of Delhi a Constitution Bench of this Court, (Mathew, J. speaking for the Court) after an elaborate consideration, held that the acquisition for planned development of Delhi is a public purpose. In the case of an acquisition of a large extent of land comprising several plots belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the case of an acquisition of a small area, it might be practically difficult to specify the particular purpose for which every item of land comprised in the area is needed. Under those circumstances,

the acquisition of planned development was held to be for public purpose. It is not necessary to burden the judgment with the development of the law in this behalf. Relevant decisions in this behalf are Ratni Devi v. Chief Commr.; Pt. Lila Ram v. Union of India; Om Prakash v. Union of India; Ram Chand v. Union of India; State of T.N. v. L. Krishnan and Jai Narain v. Union of India. Suffice it to state that when an authority constituted under the Act has initiated the action for acquisition of a large area of land comprising several plots for planned development, the specification of a particular land needed for a specified purpose intended to be undertaken for the development ultimately to be taken up, is not a condition precedent to initiate the action for acquisition and publication of the notification under Section 4(1) of the Act in the Gazette does not get vitiated on account thereof. The reasons are not far to seek. In drawing details, the scheme required detailed examination consistent with plans and ecological balance.

7. Shri Lekhi sought to place reliance on the judgments of this Court in Somavanti v. State of Punjab and Khub Chand v. State of Rajasthan Somavanti case relates to acquisition for a company and Munshi Singh case was considered and distinguished in T.N. case. Khub Chand case relates to compliance of Section 4(1). So it is not necessary to deal with these cases in detail. Suffice it to state that each case has to be considered on the facts and circumstances of each case. The planned development of Delhi was held to be a public purpose in Aflatoon case followed by several judgments including the latest judgment of this Court in Jai Narain case. The question then is whether the interim General Plan 1956, the Master Plan under the Development Act brought on statute in 1962 w.e.f. 1-9-1962 and further amended plan in 1990 are required to

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necessarily specify the purpose for which land is needed vis-à-vis the provisions of the Cantonments Act, 1924. It is true that when acquisition of the land was within the limits specified under Section 4 and declaration under Section 5 of the Cantonments Act, 1924 was published, the Cantonment Board and the authorities constituted thereunder get the power and jurisdiction to deal with the lands within its jurisdiction for the development. None of their representatives finds berth in Planning Council under the Development Act. Equally, under the Development Act the Delhi Development Authority and the various authorities constituted thereunder are required to prepare the Master Plan, the Zonal Plan and the Area Development Plan as required for planned development of the land. But one fact that needs to be emphasised and always kept in mind is that all these are developmental activities to be undertaken subsequent to the acquisition after the land is available. The harping and insistence on compliance of details by Shri Lekhi from several provisions in various Acts do not need elaborate consideration. As a fact the High Court had done that exercise and in our view in correct perspective. They need reiteration. Once a public purpose has been specified by the Governor in the notification and on specification obviously on presumptive satisfaction thereof the Governor issued the notification as required under Section 4(1); the absence of the specification and further elaboration of the development do not have the effect of rendering the satisfaction reached by the Governor illegal and the notification under Section 4(1) published by the Governor in exercise of the power of eminent domain is not rendered void. Therefore, it is not necessary to elaborately deal in detail with the manner in which the development has to be undertaken when the land is situated

within the cantonment area. In fact, Section 12(3)(ii) of the Development Act takes care of the development in cantonment area when there would be a conflict between the authorities under the Development Act and the need for prior approval in that behalf of the cantonment, which is a local authority, for developing land under the Development Act. As a fact, except the land in question, the land in Naraina was developed as per plan. Under those circumstances, since the High Court has elaborately dealt with this aspect of the matter in the judgment running into 129 pages, we feel it unnecessary to burden this judgment with further discussion in that behalf. Accordingly, we hold that the notification under Section 4(1) is not vitiated on account of the fact that planned development was not specified with particularisation of the land in question needed for the public purpose”.

Paragraph 12 of the above judgment is also relied upon to contend that as far as affixing of a copy of the notification at some conspicuous place in the locality is concerned, when the peon makes an endorsement about such publication, presumption under Section 114(e) of the Evidence Act can be raised.

(vi) He also referred to a judgment in **Shibu v. Tahsildar** (1993 (2) KLT 870) wherein Division Bench of this Court held that after the proclamation of His Highness the Maharaja of Travancore dated 14/6/1881, the rights in metals and minerals vest in the State. It is held that there is no conflict between the

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acquisition of title to mines and minerals and the regulation and development of rights in relation to the same and therefore vesting of mineral rights in the State was independent and unaffected by the Mines and Minerals (Regulation and Development) Act, 1957.

(vii) ***Bailamma v. Poornaprajna House Building Co-operative Society*** (2006 (2) SCC 416) is relied upon for the very same proposition that the period of passing the award gets extended if there was any stay of any action or proceedings taken pursuant to the declaration. Para 16 is relevant, which reads as under;

“16. This Court emphasised the fact that Section 11-A was enacted with a view to prevent inordinate delay being made by the Land Acquisition Officer in making the award which deprived owners of the enjoyment of the property or to deal with the land whose possession has already been taken. Delay in making the award subjected the owner of the land to untold hardship. The objects and reasons for introducing Section 11-A into the Act were that “the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them” and “it is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act”. The emphasis, therefore, was on the Collector

making his award within the period prescribed. However, the legislature was also aware of the reality of the situation and was not oblivious of the fact that in many cases acquisition proceedings were stalled by stay orders obtained from courts of law by interested parties. It, therefore, became imperative that in computing the period of two years, the period during which an order of stay operated, which prevented the authorities from taking any action or proceeding in pursuance of the declaration, must be excluded. If such a provision was not made, an acquisition proceeding could be easily defeated by obtaining an order of stay and prolonging the litigation thereafter. Explanation to Section 11-A was meant to deal with situations of this kind. The Explanation is in the widest possible terms which do not limit its operation to cases where an order of stay is obtained by a landowner alone. One can conceive of cases where apart from landowners others may be interested in stalling the land acquisition proceeding. It is no doubt true that in most of the reported decisions the party that obtained the stay order happened to be the owner of the land acquired. But that will not lead us to the conclusion that the Explanation applied only to cases where stay had been obtained by the owners of the land. There may be others who may be interested in obtaining an order of stay being aggrieved by the acquisition proceeding. It may be that on account of development of that area some persons in the vicinity may be adversely affected, or it may be for any other reason that persons in the locality are adversely affected by the project for which acquisition is being made. One can imagine many instances in which a person other than the owner may be interested in defeating the acquisition proceeding. Once an order of stay is obtained and the Government and the Collector are prevented from taking any

further action pursuant to the declaration, they cannot be faulted for the delay, and therefore, the period during which the order of stay operates must be excluded. In a sense, operation of the order of stay provides a justification for the delay in taking further steps in the acquisition proceeding for which the authorities are not to blame."

(viii) **Ramnijklal N.Bhutta v. State of Maharashtra** (1997

(1) SCC 134) is relied upon to contend that while exercising power under Article 226, the Court should be concerned about the larger public interest. Para 10 is relevant, which reads as under;

"10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in

High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Article 226 — indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.”

(ix) **Girias Investment Private Limited v. State of Karnataka** (2008 (7) SCC 53) is relied upon to contend that

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malafides cannot be presumed. It arises only in two counts. First, if the impugned action had been taken with the specific object of damaging the interest of the aggrieved party and secondly to help another party which results in damage to the party alleging malafides. Unless factual basis is available to infer such malafides, the Court cannot proceed to find malafides against the State or its authorities. Para 14, 19, 20 and 23 are relevant, which read as under;

“14. It is obvious from a reading of the pleadings quoted above that only vague allegations of mala fides have been levelled and that too without any basis. There can be two ways by which a case of mala fides can be made out; one that the action which is impugned has been taken with the specific object of damaging the interest of the party and, secondly, such action is aimed at helping some party which results in damage to the party alleging mala fides. It would be seen that there is no allegation whatsoever in the pleadings that the case falls within the first category but an inference of mala fides has been sought to be drawn in the course of a vague pleading that the change had been made to help certain important persons who would have lost their land under the original acquisition. These allegations have been replied to in the paragraph quoted above and reveal that the land which had been denotified belonged to those who had absolutely no position or power. In this view of the matter, the judgments cited by Mr Dave have absolutely no bearing on the facts of the case.”

“19. It is no doubt open to the court to go into the question of mala fides raised by a litigant but in order to succeed, much more than a mere allegation is required. Mr Dave’s inference of mala fides based on the ground that the change in the location of the trumpet interchange and the access road had been suddenly made without proper application of mind to help certain unidentified individuals resulting in the acquisition of the land belonging to the appellants is, thus, without any factual basis.

20. Mr Holla, the learned counsel appearing for some of the respondents has also placed reliance on Keshab Roy v. State of W.B., First Land Acquisition Collector v. Nirodhi Prakash Gangoli, Ajit Kumar Nag v. Indian Oil Corpn. Ltd. and Parkash Singh Badal v. State of Punjab to submit that a mere allegation of mala fides is not enough and cogent evidence thereof must be given. We respectfully endorse the opinion expressed in these judgments and reiterate that no material or details of mala fides have come on record in the present case. We nevertheless quote paras 56 and 57 from Ajit Kumar Nag case to support our discussion: (SCC p. 790)

“56. In our view, neither the learned Single Judge nor the Division Bench has committed any error of law and/or of jurisdiction which deserves interference in exercise of discretionary jurisdiction under Article 136 of the Constitution. As is clear, the situation has been created by the appellant. It was very grave and serious and called for immediate stern action by the General Manager. Exercise of extraordinary power in exceptional circumstances under Standing Order 20 (vi) in the circumstances, cannot be said to be arbitrary, unreasonable or mala fide. It is well settled

that the burden of proving mala fides is on the person making the allegations and the burden is 'very heavy'. (Vide E.P. Royappa v. State of T.N.) There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fides are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer, J. stated in Gulam Mustafa v. State of Maharashtra (SCC at p. 802, para 2): 'It (mala fides) is the last refuge of a losing litigant.'

57. We hold Clause (vi) of Standing Order 20 of the Certified Standing Orders of the respondent Corporation valid, constitutional and intra vires Article 14 of the Constitution. We also hold the action taken by the General Manager of the respondent Corporation dismissing the appellant-petitioner from service as legal and lawful. We thus see no substance either in the appeal or in the writ petition and both are, therefore, dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs."

In the light of the above, no further discussion on this aspect is called for.

23. As observed above, the appellants have not identified any person who had been instrumental in harming their cause. We would, therefore, even be precluded from going into the question of mala fides although we have nevertheless examined the matter in extenso."

16. Having regard to the various contentions urged, the following issues arise for consideration:-

(i) Whether the Corporation requires sanction of the Government for acquisition of land, and if so, whether any such sanction exists?

(ii) Whether the sanction granted by the Government for acquiring land is only by negotiated purchase?

(iii) Whether the notification issued under Section 4(1) of the LA Act is by a competent authority or not?

(iv) Whether there is any *mala fides* on the part of the Corporation in requisitioning the aforesaid land for acquisition?

(v) Whether the acquisition proceedings amounts to a colourable exercise of power?

(vi) Whether the proceedings taken by the requisitioning authority or land acquisition authorities are vitiated by fraud ?

(vii) Whether the enquiry under Section 5A is vitiated by non compliance of principles of natural justice or non consideration of the objections?

(viii) Whether the declaration under Section 6 of the Act has been made within time?

(ix) Whether any of the lands could have been excluded from acquisition on the ground that the property was used for mining purposes?

17. **Issue No.(i)** Whether the Corporation requires sanction of the Government for acquisition of land, and if so, whether any such sanction exists?

Before proceeding further, it would be useful to refer to Section 4(1) of the Land Acquisition Act, 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 the publication of the notification).”

It is apparent that a notification under Section 4(1) can be issued if it appears to the Government or to the Board of Revenue or to the Collector that land in any locality within the State is needed or

is likely to be needed for any public purpose or for a company.

“Public purpose” for Corporation is specified under Section 3(f)

(iv) which reads as under;

“3(f) the expression "public purpose" includes-

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

Sub clause (iv) of Section 3(f) clearly indicates that the provision of land for a Corporation owned or controlled by the State is a public purpose. “Company” has been given the meaning as provided under Section 3(e) as under;

“[(e) the expression "Company" means-

*(i) a company has defined in S.3 of the Companies Act, 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)”;*

The aforesaid provision clearly excludes a Government company referred to in Clause (cc) of Section 3, which is defined as under;

*“(cc) the expression "**corporation owned or controlled by
the State**" means any body corporate established by or under*

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a Central, Provincial or State Act, and includes a Government company as defined in S.617 of the Companies Act, 1956 , 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, being a society established or administered by Government and a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, being a co-operative society in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;"

The Corporation is apparently a company fully owned and controlled by the Government of Kerala and therefore in the light of the aforesaid statutory provisions, any provision of land for a Corporation is deemed to be for public purpose. Therefore, when a 'Corporation' as defined under Section 3(cc) requests for acquisition of land, either to the Government or to the Board of Revenue (presently Land Revenue Commissioner) or to the District Collector, it is open for either of these authorities to issue a notification in terms of Section 4(1) of the Act. It is argued on behalf of the appellants that requisition for acquiring the land under the Act shall be made in Form No.2 to the District Collector within whose jurisdiction land is situated and if the District

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Collector decides that the land applied for should be acquired under the Act, it shall be forwarded to the concerned LAO for initiating land acquisition proceedings as provided under Rule (4) of the Land Acquisition (Kerala) Rules, 1990 (hereinafter referred to as the 'LA Rules'). It is argued that prior sanction has to be obtained from the State Government which is evident from Form No.2, which has a column provided as 8(a), which states that "whether the sanction of the competent authority has been obtained." Reliance is also placed on the Government circular dated 30/11/1996 to indicate that if Public Sector Undertakings require acquisition of land, they have to obtain sanction of the Government from the concerned administrative department and the same should be appended to the requisition. It is argued that there is no such permission obtained before acquisition of land, which is not seen from the requisition submitted before the Collector. Learned counsel also placed reliance on another Government Order dated 3/7/2007 by which Government had given permission for acquisition of 80 acres of land in Ramanattukara village for KINFRA Park. It is stated that there was specific provision that land can be acquired under the provisions

of LA Act, which is lacking in the case on hand. When a Government owned company requires land for their purpose and a requisition is send in Form No.2, Competent authority referred to in column 8(a), apparently is not the State Government. However while sending the requisition Ext.P32 dated 10.1.2008, in column 8(a) reference is made to Ext.P7. In fact the only requirement which is specified, is under Rule 9(3), which indicates that when the acquisition is for a public purpose other than for the purposes of the State Government or Central Government, no declaration shall be published unless the requisitioning authority executes in favour of the District Collector, an agreement in Form No.7. Though initially it was contended that no such agreement was executed, later, during the course of argument, learned counsel for appellants fairly conceded that such an agreement was indeed executed between the Corporation and the Government. It is therefore clear that a formal sanction from the Government is not contemplated under the Act or the Rules to enable a Corporation owned by the Government to acquire land needed for its purpose. At any rate, the documents produced in the case and forming part of records clearly indicate that the

Corporation had in fact requested the Government for acquiring an extent of 250 acres of land which was permitted by the Government as per Ext.P7. The argument is that when the Board of Directors of the Corporation resolved to acquire land for Integrated IT Park, the Chairman and Managing Director of the Corporation had informed the Government for setting up of a Life Science Park which was never in the contemplation of the Board of Directors. It is also contended that the purpose for which acquisition is being made is not for the purpose of the Corporation whereas it is only for the purpose of forming a special purpose vehicle (another company), for the purpose of transferring the land in their favour in which the Government or the Government companies will have 26% shares. Further, the Board decided to acquire land by negotiated purchase which alone was permitted by the Government and therefore, there was no reason for proceeding to acquire land by invoking land acquisition proceedings. But the chronology of the events would indicate that such an argument is unsustainable. As already indicated in the Board resolution dated 29/12/2006, the Board was informed about the Government decision to constitute a Public Limited Company

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in the model of Cochin International Airport Ltd. (CIAL), and the objective was to develop industrial parks and townships for the knowledge based industries and development of other infrastructure facilities necessary for such parks. In so far as such a company has not been formed, the proposal before the Board of Directors was to acquire the land in its own name with its own funds. As far as transfer of land for setting up of an Integrated IT Corridor is concerned, that was the initial proposal. The approval granted by the Board was for acquisition of 250 Acres of land through negotiated purchase with specific approval of the Government. The letter dated 22/01/2007 issued by the Corporation to the Principal Secretary to Government is with reference to acquisition of 250 Acres of land which they have identified. Therefore, it could be seen that the primary decision of the Board of the Corporation for which approval was sought from the Government was to acquire 250 Acres of land which they have identified. Ext.P7 is the permission granted on 05/12/2007 which was later modified as per Ext.P8 dated 15/01/2008 including the survey numbers and other particulars of the property to be acquired. The Government's decision was for

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acquisition of land on certain conditions. Therefore the fact that acquisition of 250 Acres of land identified by the Corporation for the Life Science Park to be set up later is, in principle, sanctioned by the Government as evident from Exts.P7 and P8.

18. Issue No. (ii) Whether the sanction granted by the Government for acquiring land is only by negotiated purchase?

The main contention urged on behalf of the petitioners/appellants is that the Board of the Corporation as well as the Government, while granting sanction to acquire land only permitted negotiated purchase and not acquisition under the provisions of the Land Acquisition Act. As already indicated, petitioners rely upon Exts.P4 to P8 to substantiate the above contention. Ext.P4 is the Government Order dated 20/11/2006, which is an order issued for formation of a Public Limited company for infrastructure development in the model of CIAL. By Ext.P5 Board Resolution of the Corporation, a decision was taken to acquire land even before the incorporation of the said company. In the last portion of the Board decision, it is recorded as under:-

“The Board discussed the matter and approved the proposal for acquisition of the proposed 250 Acres of land through negotiated purchase with the

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specific approval of the Government”.

In the letter sent to the Government by the Corporation on 22/01/2007 as Ext.P6, after referring to the fact that the land had been identified, request is made as under;

*“Government may be pleased to accord approval
for the acquisition of the above land”.*

In the sanction order dated 5/12/2007 (Ext.P7), the Government, after referring to the request made by the Corporation, permitted acquisition of the land on certain conditions and one of the conditions in vernacular is;

“സ്ഥലം വിലപേശി ഏറ്റെടുക്കുമ്പോൾ
ന്യായമായ വില (മാർക്കറ്റ് വില)
ഉറപ്പുവരുത്തണം”.

This means that “Reasonable price (market value) shall be ensured while acquiring land by negotiation”. Ext.P8 also does not make any change regarding the same. It only confirms the particulars of the survey number and other details of the property. The contention urged on behalf of the appellants is that, what is permitted by the Government Order is only acquisition of land by negotiated purchase and not by resorting to the provisions of the LA Act. But it is relevant to note that the

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documents produced in the case by itself would show that proceedings were initiated for acquisition of land under the provisions of the LA Act. In Ext.P7 itself, permission granted by the Government is for acquisition of land and thereafter certain conditions are mentioned. In the counter affidavit filed by the 2nd respondent, Secretary to Government, it is stated that KSIDC has kept the option open for negotiated settlement as well as acquisition through notification. The Corporation notified the proposed acquisition to make the negotiated settlement faster, so that the proposed land could be acquired without much delay. Reference is made to the minutes of the Board of Directors in its 259th meeting held on 21/06/2008, wherein, proposal for acquisition of land for Life Science Park was ratified. Further, the District Collector, by Ext.R4(a) letter dated 11/09/2007, has informed the Government that the site suitable for the proposed project could be acquired for the purpose of the Corporation. Ext. R4(a) dated 11.9.2007 reads as under:

"Sir,

*Sub:- Land Acquisition Life Science park -250
Acres report submitting reg.*

Ref:- 1. Govt. letter No.6679/J1/07/ID dated

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30.7.2007 & 22.08.2007.

2.That Office letter No.KSIDC/TVM/2007/
3017 dated 22.01.2007 addressed to
the Principal Secretary to Govt.
Industries Dept.

Kind attention is invited to the reference cited.
As directed, the Deputy Collector (LA), Collectorate,
Thiruvananthapuram along with requisitioning
authority has conducted joint inspection of the
proposed acquisition site and reported that there is
no objectionable elements in the land acquisition site
and land is quite suitable for the proposed part.

Hence it is requested that necessary
sanctioning orders may be given for the acquisition
of 250 Acres of land in Vailoor Village (Block-3)
(Survey Nos. as in letter 2nd cited) invoking urgency
clause for the Science Park by Kerala State Industrial
Development Corporation Limited”.

The relevant Board note and decision of the Board in its meeting
held on 21.6.2008 reads as under:

**“KERALA STATE INDUSTRIAL DEVELOPMENT
CORPORATION LTD., THIRUVANANTHAPURAM
259TH BOARD MEETING 21ST JUNE,2008**

Supplementary Item No:2

**Progress on the land Acquisition at Pallipuram
Trivandrum**

INTRODUCTION

A proposal to acquire 250 acres of land near

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Trivandrum by KSIDC for setting up an Integrated IT Park cum Township was placed at the 251st Board Meeting of KSIDC held on 29/12/2006. It was proposed to buy the land on negotiated purchase and then transfer the same to INKEL, a public limited company which was then under formation, as part of KSIDC's equity in the company. The Board discussed the matter and approved the proposal for acquiring the proposed 250 acres of land through negotiated purchase with the specific approval of Government.

CURRENT STATUS

In line with the Industrial Policy and considering the immense potential of the region, it was subsequently decided that KSIDC will directly develop a Life Sciences Park in the 250 acres of land earmarked at Pallipuram, Trivandrum. Approval from Government to acquire the said land for setting up a life sciences park, was sought and Government vide G.O(R.t) no.1551/07/ID dated 5.12.07 and G.O (R.t) No.38/2008/ID dated 15.01.08 have approved the said acquisition by KSIDC.

The Life Sciences Park to be developed by KSIDC would consist of most modern facilities for Biotechnology, nanotechnology and other R&D and knowledge based companies. Steps have been initiated for acquiring the above land and the 4(1) notification has been issued. The entire process of

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acquisition is envisaged to be completed in 18 months time.

For ratification and information of the Board.

Sd/-
MANAGING DIRECTOR"

"MINUTE NO.4848

SUPPLIMENTARY AGENDA ITEM NO.2

Progress on the Land Acquisition at Pallipuram, Trivandrum.

The Board noted that in its 251st Meeting held on 29/12/2006 had approved the proposal for acquisition of 250 acres of land near Trivandrum for setting up an integrated IT Park-cum-Township and transfer the same to Inkel. However, subsequently, in line with the Industrial Policy and considering the immense potential of the region, the Corporation decided to develop a Life Science Park in the 250 acres of land earmarked at Pallippuram, Trivandrum. The Government vide their letter dated 5.12.07 and 15.01.08 have approved the said proposal of the Corporation. The Board noted that the Life Science Park would consist of modern facilities for Bio-technology, nano technology and other R & D knowledge based companies. The Board noted the progress made in the acquisition process and ratified the action taken by the Managing Director in the matter".

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Two things are clear from the aforesaid factual circumstances. One is that the request of the Corporation was to acquire land. Acquisition of land was permitted by the Government. The condition imposed was that while acquiring land by negotiation, the Corporation was asked to pay reasonable compensation, which is equivalent to the market value and to take other rehabilitation measures. After publication of the notification under section 4(1), the decision of the Managing Director was ratified by the Board. The very fact that acquisition was permitted clearly indicates acquisition under the LA Act. Negotiated purchase is also one of the methods which could be adopted for fixation of price after notification under Section 4(1), which is evident from Section 11(2) of the Act which reads as under;

“(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement”.

Therefore, merely for the reason that Government had insisted for payment of reasonable compensation to the land holders if the acquisition is by negotiation, does not indicate that acquisition can be made only by the method of negotiated purchase. That apart, Ext.P32 requisition itself would indicate that the Corporation had submitted a requisition for acquiring land to the District Collector as per Rules. Under such circumstances, we cannot agree with the contention urged on behalf of the appellants that the acquisition can be made only by negotiated purchase and not by resorting to the provisions of the LA Act.

19. Issue No. (iii) Whether the notification issued under section 4(1) of the LA Act is by a competent authority or not ?

The contention urged is that the Special Tahsildar (Land Acquisition), Pandaravaka had no right to issue notification under Section 4(1) and that the notification issued by him is incompetent and therefore void. Reference is made to the notification issued by Govt. of Kerala Revenue (B) Department as per GO(Rt) No.2301/2007(RD) dated 30/5/2007. This notification is issued by the Government in exercise of powers conferred by clause (c) of Section 3 of the LA Act appointing the Special

Tahsildar (Land Acquisition), Sree Pandaravaka Lands, Trivandrum to perform the functions of a Collector under the Act within the area specified in column 2 which is “Thiruvananthapuram District”. The learned counsel for the appellants relying upon the explanatory note submits that the Special Tahsildar is appointed only for acquisition of land for Techno-city which is the purpose of issuing the notification and was not intended for notifying him as Special Tahsildar for acquiring the land which is covered by the 4 (1) notification in the present case. This argument is totally unsustainable as evident from the explanatory note itself which says “(this does not form part of the notification but is intended to indicate its general purport)”. Therefore, a reading of explanatory note cannot dilute the jurisdiction vested in the Special Tahsildar (Land Acquisition) Sree Pandaravaka Lands, who is empowered to have jurisdiction for issuing notification under Section 4(1) in Thiruvananthapuram district. Therefore, the said contention cannot be taken on its face value and is rejected.

20. Issue No. (iv) Whether there is any *mala fides* on the part of the Corporation in requisitioning the aforesaid land for acquisition?

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First of all, it could be seen that the Corporation is fully owned and controlled by the Government and the Government officers are appointed as office bearers and Managing Director of the said Corporation. They will also be in charge of other departments of the Government. In the present case, Sri.P.H.Kurian, who was at the relevant time heading the Corporation, was the Industries Secretary. Merely for the reason that he was having dual functions does not indicate that his actions were *mala fide* or he had a *bias* in favour of acquisition nor there is a likelihood of bias. He was only performing his official duties as Industries Secretary and as the Managing Director of the Corporation. Other than contending that there is malafides in the acquisition, no materials have been produced to substantiate the said contention.

21. **Issue No. (v)** Whether the acquisition proceedings amounts to a colourable exercise of power?

In ***Srinivasa Coop. House Building Society Ltd. v. Madam Gurumurthy Sastry***, (1994) 4 SCC 675, it is held as under:

“It would thus be clear that when an act is done by the State under colour of authority of law it must be for the lawful purpose envisaged under the Act. If the purpose, namely,

public purpose envisaged under the Act is not served then the exercise of the power of the declaration under Section 6 must be held to be colourable exercise of the power, though not with evil motive."

The contention of learned counsel is that the acquisition is only for real estate purpose and the land is only to be transferred later to a company in which Government or Government companies had only 26% shares, which clearly amounts to an acquisition for private purposes and is a colourable exercise of power. Further it is contended that section 4(1) notification was issued as even according to the Corporation, negotiated purchase was not possible. Reference is made to Ext.R4(a) letter dated 11/09/2007, by which the District Collector requested the Principal Secretary to Government that necessary orders may be given for acquisition of 250 Acres of land invoking urgency clause for setting up the Life Science Park by the Corporation. Learned counsel relied upon Ext.P4, letter dated 20/11/2006, by which the main features of the Memorandum and Articles of Association of the company, to be formed later, have been mentioned, wherein it was stated that 26% of the shares will be of the State Government and Government Companies like KSIDC and KINFRA. We do not think

that the aforesaid documents can be relied upon to contend that the acquisition is for private purposes. The whole intention of the acquisition of 250 Acres is for setting up of a Life Science Park as now projected in Exts.P7 and P8 sanction granted by the Government as well as in the notification issued under Section 4 (1) of the LA Act. In fact availability of land for setting up a Life Science Park is the primary requirement to enable the Government to proceed with a particular project. Two things are clear. One is that the Government intends to set up a Life Science Park in about 250 Acres of land and secondly, acquisition of land is entrusted with the Corporation, which has to acquire land with their own funds. In the counter affidavit filed by the Corporation it is stated that no company is to be formed for setting up a Life Science Park and it will be set up by the Corporation itself. Therefore, the argument that the very process of acquisition is to circumvent the provisions of acquisition of land for private companies and hence it amounts to a colourable exercise of power, is totally unfounded. It is apparent from what is stated above that the Corporation has proposed acquisition of 250 Acres of land at the instance of the Government for setting up of a Life

Science Park. In Ext.P4 Government Order dated 20/11/2006, the method of formation of a company in the form of CIAL is indicated. That is by transfer of land to a Company in which the Government will have 26% participation. This cannot be termed as a real estate activity or an activity to circumvent the provisions of acquisition of land for public purpose. The very purpose behind acquisition is for setting up of a Life Science Park which is in public interest and it is for the advancement of commercial ventures at the instance of the State Government. Unless land is provided to entrepreneurs for setting up Pharmaceutical, Medical devices, Bio-Technology Industries, and for construction of buildings for research and development, technology advancement etc., no Government can aspire for changing its socio-economic standards. Under such circumstances, we are of the view that the public purpose behind the acquisition cannot be challenged on the ground of colourable exercise of power.

22. Issue No. (vi) Whether the proceedings taken by the requisitioning authority or land acquisition authorities are vitiated by fraud ?

Satyam Fibres (India) Pvt. Ltd (supra) is relied upon to contend that fraud has been committed by the requisitioning authority as well as the Governmental authorities. Paras 22 and 23 of the said judgment have been relied upon which read as under;

“22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court’s business.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. Xxxxxx”

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A.V.Papayya Sastry (supra) is also relied upon. Para 22 is relevant, which reads as under.

“22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings”.

The contention urged is that the Managing Director of the Corporation has misled the District Collector and made him accept Ext.P32 requisition for acquisition of land in terms with LA Act. The Special Tahsildar, Sree Pandaravaka lands being not competent to acquire land, refers to Government orders which permits only acquisition by way of negotiated purchase and has thereby committed fraud in issuing Section 4(1) notification. Yet another ground taken is that for issuing a corrigendum on 26/10/2009, Special Tahsildar, had no authority as by the said time he had submitted a report to the Land Revenue Commissioner as early as on 13/10/2009. It is stated that the Land Revenue Commissioner was misled while issuing declaration under Section 6 of the LA Act. The corrigendum which has been

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relied upon is published in the Gazette on 26/10/2009. The corrigendum was for the purpose of indicating that the GO No.614/2008 dated 21/6/2007 has to be read as GO(Rt) No.2301/2007(RD) dated 30/5/2007. A perusal of Section 4(1) notification, Ext.P1, would indicate that the LAO appears to have derived his power as per GO No.1551/2007 and GO(Rt) No.38/2008 of the dates 5/12/2007 and 15/01/2008 respectively. As per Government Order dated 26/10/2009, the said entry has to be corrected as GO(Rt) No.2301/2007(RD) dated 30/5/2007. This apparently was a mistake which requires to be corrected and no fraud can be attached to the said notification. At any rate, it is evident from GO(Rt) 2301/2007(RD) dated 30/5/2007 that he is entitled to exercise the power of Collector. Though a contention has been raised regarding fraud on the basis that the intention of the authorities was to somehow acquire the land, we do not think that the ingredients of fraud in publication of Section 4(1) notification had been brought out. There is no dispute about the fact that fraud vitiates all solemn acts and if the fraud is proved in any of the transactions relating to acquisition proceedings, it goes to the root of the matter and the entire process of acquisition can

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be set aside on proof of fraud. It is evident from the materials placed on record that Special Tahsildar (Land acquisition), Sree Pandaravaka Lands has been duly authorised to become the Land Acquisition Officer. Under such circumstances, he is entitled to publish notification under Section 4(1) and also submit report to the Land Revenue Commissioner for publication of declaration under Section 6 of the Act. Once the power is vested with the LAO, his actions cannot be termed as fraud. As far as the involvement of the Managing Director of Corporation with reference to acquisition, the contention is that he had misled the District Collector to take acquisition proceedings under the LA Act when the Government permission was for negotiated purchase. We have already held that the Government Orders had given permission to "acquire lands" and it is not merely confined to negotiated purchase. The Board of the Corporation also ratified the action initiated for acquisition of land by issuing section 4(1) notification. Much reliance has been placed on Ext.P16 communication of the Land Revenue Commissioner. He had stated two reasons for not publishing the declaration. We have already held that those two reasons are incorrect. Therefore, the

contention regarding fraud is not tenable. The judgments relied upon applies only if any fraud is committed and as already stated, we cannot subscribe to the view that any fraud has been committed in the present proceedings.

23. Issue No. (vii) Whether the enquiry under Section 5A is vitiated by non compliance of principles of natural justice or non consideration of the objections?

The next contention urged is with reference to the manner in which enquiry under Section 5A has been conducted. The learned counsel for the appellants relied upon various judgments to contend that an opportunity for hearing in terms of Section 5A enquiry will be meaningful and it should not be a farce. Section 5A of the LA Act reads as under;

“5A:Hearing of objections

(1) Any person interested in any land which has been notified under section 4 , sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, 1.1. Substituted for "within thirty days after the issue of the notification' by the Land Acquisition (Amendment) Act, 1984. [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the

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Collector in writing, and the Collector shall give the objector an opportunity of being heard 2.2. Substituted for "either in person", by the Land Acquisition (Amendment) Act, 1984 [in person or by any person authorised by him in this behalf] or by pleader and shall, after hearing all such 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 , sub- section (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 decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act."

The position of law in this regard is well settled as held by the Apex Court in the following judgments:

(i) ***Surinder Singh Brar and Others v. Union of India and ors*** (2013 (1) SCC 403). Para 84 is relevant, which reads as under;

"84. What needs to be emphasised is that hearing required to be given under Section 5-A(2) to a person who is sought to be deprived of his land and who has filed objections under Section 5-A(1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further enquiry as he may think

necessary. In either eventuality, he has to make report in respect of the land notified under Section 4(1) or make different reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections and submit the same to the appropriate Government along with the record of proceedings held by him for the latter's decision. The appropriate Government is obliged to consider the report, if any, made under Section 5-A(2) and then record its satisfaction that the particular land is needed for a public purpose. This exercise culminates into making a declaration that the land is needed for a public purpose and the declaration is to be signed by a Secretary to the Government or some other officer duly authorised to certify its orders. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is sine qua non for issue of a declaration under Section 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file . objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under Section 5-A (1) and submissions made at the hearing given under Section 5-A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made under Section 6(1) will be devoid of legal sanctity if statutorily engrafted procedural

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

(ii) In **Raghubir Singh Sehrawat v. State of Haryana** (2012 (1) SCC 792), Supreme Court had occasion to consider the scope and effect of Section 5A. Paragraphs 39 and 40 are relevant, which read as under;

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

40. Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector

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should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons”.

(iii) ***Hindustan Petroleum Corporation v. Darius Shapur Chenai and others*** (2005 (7) SCC 627). Para 15, 16, 28 and 29 are relevant, which read as under;

“15. Section 5-A of the Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate Government in respect of the land which is the subject-matter of notification under Section 4(1) of the Act. The said report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a report together with the records of the case, the Government is to render a decision thereupon. It is now well settled in view of a catena of decisions that the declaration made under Section 6 of the Act need not contain any reason. (See Kalumiya Karimmiya v. State of Gujarat and Delhi Admn. v. Gurdip Singh Uban.)

16. However, considerations of the objections by the owner of the land and the acceptance of the recommendations by the

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Government, it is trite, must precede a proper application of mind on the part of the Government. As and when a person aggrieved questions the decision-making process, the court in order to satisfy itself as to whether one or more grounds for judicial review exist, may call for the records whereupon such records must be produced. The writ petition was filed in the year 1989. As noticed hereinbefore, the said writ petition was allowed. This Court, however, interfered with the said order of the High Court and remitted the matter back to it upon giving an opportunity to the parties to raise additional pleadings.”

“28. Although assignment of reasons is the part of principles of natural justice, necessity thereof may be taken away by a statute either expressly or by necessary implication. A declaration contained in a notification issued under Section 6 of the Act need not contain any reason but such a notification must precede the decision of the appropriate Government. When a decision is required to be taken after giving an opportunity of hearing to a person who may suffer civil or evil consequences by reason thereof, the same would mean an effective hearing.

29. The Act is an expropriatory legislation. This Court in State of M.P. v. Vishnu Prasad Sharma observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also Khub Chand v. State of Rajasthan and CCE v. Orient Fabrics (P) Ltd.]

There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative”.

(iv) In **Ramji Veerji Patel and others v. RDO and others**

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(2011 (10) SCC 643), Apex Court held at paragraphs 10, 11 and 15 as under:

“ 10. The provisions contained in the Act, of late, have been felt by all concerned, do not adequately protect the interest of the landowners/persons interested in the land. The Act does not provide for rehabilitation of persons displaced from their land although by such compulsory acquisition, their livelihood gets affected. For years, the acquired land remains unused and unutilised. To say the least, the Act has become outdated and needs to be replaced at the earliest by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly, Article 300-A of the Constitution. We expect the law-making process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay.

11. Reverting back to the Act, that Section 5-A of the Act confers a valuable right on the person interested in any land which has been notified under Section 4(1) as being needed for a public purpose or likely to be needed for public purpose is beyond doubt. By this right, the owner/person interested may put forth his objections not only in respect of public purpose but also the suitability of the acquisition in respect of his land. The objector gets an opportunity under Section 5-A to persuade the Collector that his land is not suitable for the purpose for which the acquisition is being made or the availability of other land suitable for that purpose. Section 5-A proceedings are two-tier proceedings. In the first step, the objections by the owner/person interested are heard by the Collector and a report is submitted to the Government. In the second step, the final

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decision is taken by the Government on the objections so furnished by the person interested and the consideration of the report submitted by the Collector.”

“15. As a matter of law, under the Act, the only right that the owner/person interested has, is to submit objections to the compulsory acquisition of his land under Section 5-A. No question, such right and the consideration of objections filed by the landowner/person interested in exercise of such right must be given the importance they deserve. The question before us is, whether the consideration of the appellants’ objections to the acquisition of their land by the Government suffers from any illegality or irrationality.”

The question to be considered is whether the factual materials available on record disclose a proper enquiry in terms with the well settled principles laid down by the Apex Court in the judgments aforesaid. The appellants rely upon Ext.P30 which is a report prepared in regard to the enquiry in terms of Section 5A of the LA Act. It can be seen that the objections of every land owner has been made mention in the said report and the recommendation was to reject the objections on account of the public purpose involved in the matter. Some of the land owners have requested for excluding their property from acquisition on the ground that certain others had been excluded. But it is relevant to note that the objections raised by all of them had been

taken note of and considered by the LAO. In fact the appellants had filed their objections in terms of Exts.P24 and P25, which were already considered by the LAO and merely for the reason that the substance of the hearing held on 23/6/2009 does not form part of the record by itself cannot be a reason for setting aside the acquisition proceedings. Perusal of Ext.P30 clearly indicates that the objections raised by all the objectors had been considered. The report though does not disclose a thorough investigation into all the objections raised, still, it could be seen that a report is seen prepared regarding the nature of objections and whether those objections are germane for consideration when land is acquired for a public purpose. In the light of the materials made available before this Court, it cannot be said that the land owners were not given an opportunity for hearing, nor can it be said that the hearing was not meaningful. All the objections were taken note of and has been rejected as evident from the report made available in the case.

24. **Issue No. (viii)** Whether the declaration under Section 6 of the Act has been made within time?

Padma Sundara Rao and Others (supra) has been relied upon to emphasise the purpose and requirement of Section 6 declaration. It is held that Courts should not place reliance on decisions without discussing whether the factual situation fits in with the fact situation of the decision on which reliance is placed. Reference is made to para 9 of the judgment, which reads as under;

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases”.

On the question of limitation as provided under Section 6(1) (ii), reliance is placed on paras 11, 14 and 16, which read as under;

“11. It may be pointed out that the stipulation regarding the urgency in terms of Section 5-A of the Act has no role to play when the period of limitation under Section 6 is reckoned. The purpose for providing the period of limitation seems to be the avoidance of inconvenience to a person whose land is sought to

be acquired. Compensation gets pegged from the date of notification under Section 4(1). Section 11 provides that the valuation of the land has to be done on the date of publication of notification under Section 4(1). Section 23 deals with matters to be considered in determining the compensation. It provides that the market value of the land is to be fixed with reference to the date of publication of the notification under Section 4(1) of the Act. The prescription of time-limit in that background is, therefore, peremptory in nature. In Ram Chand v. Union of India it was held by this Court that though no period was prescribed, action within a reasonable time was warranted. The said case related to a dispute which arose before prescription of specific periods. After the quashing of declaration, the same became non est and was effaced. It is fairly conceded by learned counsel for the respondents that there is no bar on issuing a fresh declaration after following the due procedure. It is, however, contended that in case a fresh notification is to be issued, the market value has to be determined on the basis of the fresh notification under Section 4(1) of the Act and it may be a costly affair for the State. Even if it is so, the interest of the person whose land is sought to be acquired, cannot be lost sight of. He is to be compensated for acquisition of his land. If the acquisition sought to be made is done in an illogical, illegal or irregular manner, he cannot be made to suffer on that count".

"14. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.) The legislative casus omissus cannot be supplied by judicial

interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah case. In Nanjudaiah case the period was further stretched to have the time period run from date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clause (i) and/or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent."

"16. The plea relating to applicability of the stare decisis principles is clearly unacceptable. The decision in K. Chinnathambi Gounder was rendered on 22-6-1979 i.e. much prior to the amendment by the 1984 Act. If the legislature intended to give a new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that the legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The maxim actus curiae neminem gravabit highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case".

The above judgment is cited in the light of the contention urged by the learned Government pleader that, since there was stay of dispossession in certain cases, such time has to be excluded from the period of limitation while considering whether declaration is

published beyond the limitation period. It is argued that merely for the reason that there was a direction not to dispossess one or two of the claimants/land owners, does not intend to take away the meaning that the exclusion of period of limitation applies only when there is a stay by an order of Court. It is argued that an order of stay of all further proceedings pursuant to 4(1) notification and mere direction not to dispossess do not preclude the authorities from taking further action in the matter. There is no dispute regarding the date when declaration was made, i.e., on 23/11/2009. However, there is dispute with respect to the date of 4(1) notification. 4(1) notification was published in the newspaper on 2/6/2008. In terms of Section 4 of the LA Act, what is relevant is the last of the dates of publication which includes publication in the locality as well. Respondents have taken a contention that it was published in the locality on 26/11/2008. From the files produced by the learned Government pleader it is seen that an endorsement is made in the notice dated 10/11/2008 that publication has been effected and report is send back. The report is initialled by the Village Officer on 26/11/2008. If this date has to be computed as the last of the

date of the publication, definitely the declaration is within time.

25. But the appellants have a case that the said date was the date after expiry of 15 days from the actual date of publication, as evident from Ext.P19, by which the Land Acquisition Officer has directed the Village Officer to return the notice 15 days after publication in the notice board. Ext.P20 is the endorsement made and signed by the Village Officer on 26.11.2008. Since the direction was to send it after 15 days, the contention is that, publication in the locality is made 15 days prior to 27.11.2008. Further it is contended that the publication in the locality should have been made immediately after the publication of section 4(1) notification in the gazette and newspaper. The endorsement of the Village Officer on the reverse side of the said notice does not indicate that publication was made on 26/11/2008, whereas it is only the date on which the notice was returned after publication. A perusal of the land acquisition files placed for perusal by the learned Government Pleader indicates the following:

(i) Endorsement dated 26.11.2008 by a peon regarding publication of notice in the locality.

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(ii) Endorsement dated 26.11.2008 of the Village Officer reporting publication in Village Office.

(iii) Endorsement dated 26.11.2008 for publication in the Taluk Office.

(iv) Endorsement dated nil for publication in the LAO's office and District Collector's office.

The date of publication of the notice in the locality is to be inferred from the endorsement dated 26.11.2008 of the peon regarding publication of notice in the locality

26. Reference is also made to Rule 7 of the Rules, which indicates that immediately after publication of the preliminary notification referred to in sub Rule (1) of Rule 5, the Land Acquisition Officer shall issue a public notice in form No.4 (a) stating that the land is needed or is likely to be needed for public purpose calling upon objections within a period of thirty days from the date of such publication. Rule 5(1) relates to publication of Section 4(1) notification in the newspaper and in the gazette. It is true that the publication in the locality has to be made immediately after Section 4(1) notification. Merely for the reason that there is delay in publication of the notice in the locality

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immediately after the gazette/newspaper publication, by itself cannot be a reason for quashing the notification, unless there is proof of mala fides, which we have already found against the appellants. Therefore, delay in publication of the notice under Rule 7 cannot be a reason for concluding that the declaration was published beyond the time specified under the LA Act.

27. Since there is some doubt regarding the date on which section 4(1) notification was published in the locality, it will be useful to consider whether the period of stay of dispossession can be excluded from the period prescribed for making the declaration under Section 6 of the LA Act. Learned Government pleader made reference to an interim order dated 05/09/2008 in W.P.C.No.25679/2008, wherein the challenge was with reference to Ext.P1 notification under Section 4(1) of the LA Act. This Court passed an order as under:

"It is submitted by the Standing Counsel for the 4th respondent that till the next posting date, the requisitioning authority will not insist on dispossessing the petitioners' properties. In view of the above submission, I direct the Land Acquisition authority not to dispossess the petitioners. Post on 18/09/08."

This direction not to dispossess the petitioners is extended until further orders. Hence there is no dispute about the fact that there was stay of dispossession by this Court in the aforesaid writ petition which was pending until disposal of the writ petition.

28. It is argued on behalf of the appellants that the proviso to section 6 has to be strictly construed as held by the Constitution Bench in ***Padma Sundara Rao*** (supra). It is argued that unless the factual situation in the present case fits in with the fact situation in the judgments relied upon by the learned Government Pleader, no reliance can be placed on the said judgments. That apart, it is argued that unless there was a stay of further proceedings for issuing a declaration, stay of dispossession alone cannot be a reason to exclude the period during which the writ petition is pending before this Court. In ***Padma Sundara Rao*** (supra), the issue involved was whether after quashing notification under Section 6 of the LA Act, a fresh period of one year is available to the State Government to issue another notification under Section 6. In that case, the notification under Section 4(1) was issued before the 1984 amendment. The publication made under Section 6(1) was within the period of 3

years as prescribed under the proviso. The said declaration has been quashed by the High Court in an earlier proceedings. It is in the said background, the Constitution Bench considered the question whether a fresh period of one year is available to the State Government to issue another notification u/s 6. It is held that when the language of Section 6(1) is plain and unambiguous, there is no scope for reading something into it. It is held that the principle of casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. It was therefore held that if the legislature intended to give a new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that the legislature provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation.

29. The judgment relied upon by the learned Government Pleader will have to be understood in the light of the judgment in ***Padma Sundara Rao*** (supra). Explanation 1 to Section 6(1)(ii)

reads as under:

"In computing any of the period referred to in the first proviso, the period during which any action or procedures to be taken in pursuance of the notification issued under Section 4(1) is stayed by an order of the Court shall be excluded."

30. It is apparent from the explanation itself that the period during which any action or proceedings to be taken pursuant to Section 4(1) notification, is stayed by an order of Court, the said period shall be excluded. The action or proceedings pursuant to Section 4(1) apparently includes hearing of objections and publication of Section 6 declaration, passing of award, payment of compensation and thereafter taking possession. What is thus excluded is any action or proceedings pursuant to Section 4(1) of the Act. The question is when there is a stay of dispossession after publication of Section 4(1) notification, whether the period during which the stay was in force is liable to be excluded while publishing a declaration under Section 6 of the Act. As already indicated, ***Padma Sundara Rao*** (supra) is a case in which the Constitution Bench was considering the question whether in the absence of any statutory provision

which permits publication of declaration after it is quashed by a Court, a further declaration could be published. It is answered in the negative as there is no specific provision enabling such publication and Courts cannot apply the principle of casus omissus.

31. In **Venkitaswamappa** (supra), one of the contentions urged while challenging notification under Section 4(1) was that the declaration was published beyond the period prescribed under proviso to Section 6(1). In that case the Court had stayed dispossession. It was held that the period during which the writ petitions challenging Section 4(1) was pending before the Court stands excluded and the limitation would start only thereafter. In **Antony Fernandez** (supra), a similar contention has been urged. In that case, while disposing of the writ petition, the High Court directed that till final decision is taken in the objection of the writ petitioner, he shall not be dispossessed from the disputed land. The claim made by the appellant was that, the said period could be excluded from the one year period. It was held that in view of the direction of the Court that possession shall not be taken till enquiry under Section 5A is held and objections are considered, would amount to stay of further proceedings pursuant to Section

4 notification. It was held that if the said period is excluded, the declaration under Section 6 was within time. When it is found that stay of dispossession also comes under the explanation to proviso to Section 6(1) of the LA Act, we are of the view that the said judgments can be applied to the facts of the case and the extended period of limitation from the date when the High Court directed stay of dispossession will apply to the facts of the present case. The aforesaid judgments are not contrary to the law laid down in ***Padma Sundara Rao*** (supra). Therefore, even without entering into the controversy regarding the actual date of publication of the notification in the locality in terms of Rule 7 of the Rules, when a stay of dispossession had been granted by this Court as early as on 05/09/2008, the period from the said date can be excluded. Going by the judgment of the Supreme Court as aforesaid, it is rather clear that an extended period of time was available for publication of the declaration. In such an event, we are of the view that declaration under Sec.6 of the Act was published in time.

32. **Issue No. (ix)** Whether any of the lands could have been excluded from acquisition on the ground that the property

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was used for mining purposes?

It is the common contention of the petitioners/appellants that most of the properties were being utilized for the purpose of mining and it has large resource of minerals which they are entitled to extract. **Thresiamma Jacob** (supra) is relied upon to emphasise the fact that the right in respect of the minerals vest in the owner of the property. Para 51 is relevant, which reads as under;

"51. The other material which prompted the High Court to reach the conclusion that the subsoil/minerals vest in the State is (a) recitals of a patta which is already noted by us earlier (in para 12) which states that if minerals are found in the property covered by the patta and if the pattadar exploits those minerals, the pattadar is liable for a separate tax in addition to the tax shown in the patta and (2) certain standing orders of the Collector of Malabar which provided for collection of seigniorage fee in the event of the mining operation being carried on. We are of the clear opinion that the recitals in the patta or the Collector's standing order that the exploitation of mineral wealth in the patta land would attract additional tax, in our opinion, cannot in any way indicate the ownership of the State in the minerals. The power to tax is a necessary incident of sovereign authority (imperium) but not an incident of proprietary rights (dominium). Proprietary right

is a compendium of rights consisting of various constituent, rights. If a person has only a share in the produce of some property, it can never be said that such property vests in such a person. In the instant case, the State asserted its 'right' to demand a share in the 'produce of the minerals worked' though the expression employed is right - it is in fact the Sovereign authority which is asserted. From the language of the BSO No.10 it is clear that such right to demand the share could be exercised only when the pattadar or somebody claiming through the pattadar, extracts/works the minerals -the authority of the State to collect money on the happening of an event - such a demand is more in the nature of an excise duty/a tax. The assertion of authority to collect a duty or tax is in the realm of the sovereign authority, but not a proprietary right".

33. But it is relevant to note that this judgment was rendered by the Supreme Court to consider the question whether the owners of jenmom lands in the Malabar area are the proprietors of the soil and the minerals underneath the soil. It is the settled principle of law that each case has to be decided on its own facts. We are concerned with minerals available in the acquired land which is covered by the Mines and Minerals (Development and Regulation) Act, 1957 and the Minor Mineral

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Concession Rules, 2015. That apart, even assuming for the sake of argument that the right in respect of minerals vest in the owner of the land, that does not indicate that the land cannot be acquired by resorting to the provisions of LA Act. It is argued that, if at all land is required for the purpose of the Corporation, they could have identified other lands which are not being used for industrial purposes. But it is relevant to note that the choice of land is well within the discretion of the competent authorities who proposed the land for acquisition and once the parameters specified under the statutory provisions are complied with, one cannot insist that a different land should be chosen.

In the light of the above findings we do not think that any grounds are made out to interfere with the judgment of the learned single Judge. The writ appeals are hence dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp