State Govt. Houseless Harijan ... vs State Of Karnataka & Ors on 11 December, 2000

Equivalent citations: AIR 2001 SUPREME COURT 437, 2001 (1) SCC 610, 2001 AIR SCW 27, 2001 AIR - KANT. H. C. R. 2273, 2001 (1) ALL CJ 803, 2001 (1) UPLBEC 313, (2001) 3 ALLMR 792 (SC), 2001 ALL CJ 1 803, 2001 (1) SRJ 235, 2000 (3) JT (SUPP) 468, 2000 (8) SCALE 281, 2001 (3) ALL MR 792, 2001 (1) LRI 390, (2001) ILR (KANT) (1) 1086, (2000) 8 SCALE 281, (2001) 1 LACC 392, (2001) 1 ANDHLD 120, (2001) 3 LANDLR 576, (2001) 2 PAT LJR 139, (2001) 1 UPLBEC 313, (2000) 8 SUPREME 358, (2001) 1 RECCIVR 424, (2001) 2 ICC 348, (2001) 1 ALL WC 476, (2001) 2 BLJ 727, (2001) 1 CURCC 28

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Bench: Ruma Pal, A.P.Misra

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           CASE NO.:
Appeal (civil) 5015 1999


PETITIONER:
STATE GOVT.  HOUSELESS HARIJAN EMPLOYEES ASSOCIATION

        Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT:       11/12/2000

BENCH:
Ruma Pal, A.P.Misra




JUDGMENT:
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L.....I.........T.......T.......T.......T.......T.......T..J J U D G M E N T RUMA PAL, J.

The question to be decided in this appeal relates to the rights of the beneficiary of an acquisition under the@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ Land Acquisition Act (hereinafter referred to as the Act)@@ JJJJ to resist withdrawal of acquisition proceedings. In the course of the arguments before us, we were of the view that the original records pertaining to this case should be produced. This was directed on 14th September 2000. The entire records have

admittedly not been produced by the State Government. We have been informed by the learned counsel appearing on behalf of the State that one of the files pertaining to the case has been destroyed on 3rd February, 2000. On the basis of the records we have found that the appellant is a Society registered under the Karnataka Societies Registration Act, 1961. It has 360 members all of whom are State Government Employees belonging to the Schedule Castes of Adidravida and Adikarnataka. It wanted to provide house sites for its members all of whom are houseless. In 1983, the appellant approached the Government to acquire 15 acres of land at Maralur village. The land belonged to respondents Nos. 5 to 7 herein. By a letter dated 10.1.1983 the Planning Authority wrote to the Assistant Commissioner, Tumkur stating that a resolution had been passed to issue no objection certificate for suitability of the land for house sites in favour of the appellant. It further said that the land was earmarked partly for residential and partly for open place in the draft lay out plan of Tumkur. On 16.7.1984 a letter was written by the Assistant Commissioner to the appellant in which the appellant had been asked to furnish the following particulars: 1. The lists of members of the Association who are siteless and houseless. 2. The financial soundness of the Association by way of the shares collected. The amount deposited in the Bank etc.; 3. The audit report for the previous three years; 4. Whether the area proposed for acquisition is treated as residential in the plan i.e. outline development plan, or comprehensive development plan, prepared by the Town Planning Department or not; 5. Whether the layout plan proposed by the association fits in the comprehensive plan of the city area, 6. Whether the proposed area is in excess/less as compared to the demand based on the number of eligible members.

On 17.8.1984 the particulars as required by the Assistant Commissioner were furnished including a copy of the lay out plan. According to the appellant, the State Government required the appellant to make a deposit towards the cost of acquisition. The appellant deposited the required amount in 1984. According to the appellant, the State Government granted prior approval to the acquisition by letter dated 7th September 1986. A notification under Section 4 (1) of the Act was published on 6th August 1987. On 9th July 1987, the appellant was called upon to deposit a further sum towards the cost of acquisition by the Land Acquisition Officer. This amount was also deposited. The records were then forwarded by the Assistant Commissioner, Tumkur under cover of a letter dated 19.11.1987 to the Revenue Commissioner and Secretary to Government, Revenue Department. These were returned with the direction that the recommendation of the District Level Committee should be submitted. According to the appellant, on 13th May 1988 it wrote to the Assistant Commissioner, Tumkur Sub-Division giving particulars of the housing scheme and again enclosing a proposed lay out plan. A letter dated 30.5.1988 was written by the appellant to the Divisional Commissioner, Tumkur requesting for expedition in which it was stated the Association has already formed 361 sites as per the draft plan measuring East to West and North to South 30ft.x 40 ft. respectively apart from road and park in 15 acres of land acquired at SY No.49 as per the Government Order No. RD/45/AQT/83 dated 27.3.1987. The District Level Committee held a meeting on 17.6.1988. The minutes of the meeting show that before recommending the appellants case all the aspects were considered and in particular : An extent of 80 x 210 Sq. feet has been left for public amenities as per the site plan, which is enclosed in the file. The Town Planning Authority has pointed that 10% of the land should be left for public amenities. The Society has agreed to this.

At its meeting held on 28.7.1988 the State Level Committee recommended the acquisition of the land in favour of the appellant for providing house sites to its members. On 10th August 1988, the State Government passed an order directing the authorities to issue the final notification under Section 6 (1) of the Act. As the statutory period provided under Section 6(1-A) (which has been inserted by way of amendment in the State of Karnataka) had already expired, a fresh Notification under Section 4 (1) of the Act was directed to be issued. Prior to the issuance of the Notification, a detailed note was prepared by the Deputy Secretary, Revenue Department which was forwarded to the Secretary. On 1.2.90, the Secretary referred to his note and proposed, We may give clearance in favour of the Association. For approval. This was approved by the Chief Secretary and placed before the Minister for Revenue who in turn approved the note on 12th February 1990. On 14th February, 1990 the Secretary, Revenue Department wrote to the Deputy Commissioner, Tumkur District: Sub: In the matter of acquisition of 15 Acres of land in Survey No. 49 of Maralur Village, Tumkur Kasaba, for housing sites in favour of Houseless Harijan-Girian Government Employees Association.

Ref: 1. Your office letter No. LAW/CR/130/88-89, dated 17.10.1989.

2. Your letter No. LAW/CR/18/88- 89, dated 26.10.1989: 5.12.1989.

After considering in great detail, the proposal contained in your letter and requisition of Houseless Government Servants Association, Tumkur and all other aspects, the State Government has decided to commence afresh the land acquisition proceedings. Therefore, I am directed to request you to take steps for issue of notification under Section 4(1) of the Land Acquisition Act.

A second notification under Section 4(1) of the Act was issued on 27.2.90 proposing to acquire the land for public purpose for the benefit of the appellant for housing its members. Again the Government did not publish the declaration under Section 6 of the Act within the time prescribed. A letter was written on 15.3.1991 by the Secretary, Revenue Department addressed to the Deputy Commissioner. The unofficial translation of the letter reads: Sub: Allotment of 15 Acres of Land in Survey No.49 in the Village Maralooru, Tumkur Disrtrict to Landless Scheduled Castes State Government Employees Union (Regd.) Reg.

Inviting attention to your letter No.LQCR- 72-90-91 dated 20th November, 1990 on the above subject, it is brought to your notice that while keeping in mind the fact that the matter of acquisition of these lands has been dropped on earlier two occasions after the initiation of the land acquisition proceedings, on examination of the objections of the land owners, again the matter of acquisition of land for being allotted to landless Scheduled Castes State Government Employees Union has been minutely examined in consultation with the Law Department. According to the opinion of the Law Department the acquisition of land in favour of the impugned Union is for a public cause. In view of this it has been decided by the Government to acquire 15 acres of land of Survey No. 49 in Maralooru Village, Tumkur District/(Kasha) in favour of the Landless Scheduled Caste State Government Employees Union, Tumkur. Thererore, I am directed to convey the approval of the Government to initiate action for issue of notification under Column 4(1) for acquisition of the above mentioned land in favour of the above mentioned Union.

A third notification under Section 4(1) was accordingly published on 22.7.1991. This was challenged by respondents 5 to 7 before the High Court (Writ Petition No. 21438 of 1991). It was contended that the appellant was not duly registered under the Karnataka Societies Registration Act, 1960 and, therefore, it was not lawful to acquire the land for it. No interim order was passed and the acquisition proceedings continued. The respondent owners filed objections to the acquisition. All the objections including the objection relating to the non-registerability of the appellant under the Karnataka Society Registration Act were rejected. According to the noting on the file dated 23.11.1991 the land owner can question the validity of the registration of the Association on the housing activities, before the appropriate authority and not before this authority. Therefore, this objection is not tenable. The rejection of the owner- respondents objection under Section 5-A were affirmed on 3.12.1991 in the report prepared by Deputy Secretary to Government, Revenue Department which was approved both by the Minister of Revenue as well as the Law Minister. Directions were accordingly issued to proceed under Section 6(1) (a) of the Act on 12.3.1992. The final Notification under Section 6 of the Act was published on 15th May 1992 declaring that the acquisition was for the public purpose of allotment of house sites to the members of the appellant. On 7th September 1992, the Land Acquisition Officer made the Award under Section 9 of the Act, issued a notice dated 15th September 1992 and directed the appellant to deposit the balance amount representing the difference between the amounts already deposited by the appellant and the amount of the Award. The balance amount of Rs.7,36,231/- was deposited on 19th November 1992. A further sum of Rs.65,926/- was also deposited on 4th January 1993 by the appellant pursuant to the directions of the Land Acquisition Officer. The total amount deposited by the appellant towards the cost of acquisition is Rs.19,01,915/. The Award was approved by the Divisional Commissioner by his O.M. dated 26th May 1993. The approval records that an inquiry was held by the Deputy Commissioner and Assistant Commissioner regarding the members of the Society and that the authorities were satisfied that the appellant-Association consisted of SC/ST members. According to the orders of the Divisional Commissioner, possession of the acquired land was to be handed over to the appellant in accordance with law. At this stage, a letter was written by the Department of Revenue to the Land Acquisition Officer directing him not to hand over possession of the land to the appellant until further orders. According to the appellant-Society, the Governments volte-face was because S.Shafiq Ahmed, the local M.L.A.(respondent No. 2) had objected to the finalisation of the land acquisition proceedings in favour of the appellant. It is alleged that the respondent No.2 had sent his objections not only to the Divisional Commissioner but also to the Revenue Minister. The Minister instructed the Revenue Commission to stop the land acquisition proceedings which in turn passed on the instruction to the Secretary to the Revenue Department of the State Secretariat as a consequence whereof the letter dated 5th July 1993 was written. On 6th July 1993, the respondents 5,6 and 7 withdrew Writ Petition No. 21438/91. The appellant filed a writ petition challenging the legality of the letter dated 5th July 1993. Although an interim order had been granted not to take further action pursuant to the letter, in the office note dated 25.6.93, the Minister of Revenue has recorded, In view of the opinion offered by the Law Deptt., it is not permissible to acquire land on behalf of the Govt. Houseless employees Association registered under Sec. 3 of the Karnataka Societies Registration Act. Hence withdrawal notification u/s 48(1) of the LA Act may be issued. And on 2nd August 1993, the Government issued a Notification under Section 48(1) of the Act withdrawing the acquisition. This was published in the Official Gazette on 5th August 1993. The appellant amended the writ application by seeking quashing of the Notification dated 2nd August

1993. A second writ petition was also filed by the appellant for the same reliefs. However both writ petitions were dismissed. It is not necessary for us to consider the order dismissing the second petition. Suffice it to say that by virtue of an order passed by this Court, the appellant was permitted to proceed with the first writ petition filed by it on 9th July 1993. The writ petition was dismissed by the Single Judge holding that there was no approval to the acquisition under Section 3(f)(iv) of the Act and that the letter dated 7th September 1986 relied upon by the appellant in this connection did not amount to such approval. It was also held that malafides had not been established, as respondent No. 2 had filed statement of objections denying all such allegations and that the appellant had not produced any material to establish that the release from the acquisition was at the instance of the second respondent in collusion with the land owners. The Single Judge also held that the Government had the absolute power to withdraw from the acquisition since possession had not been handed over to the appellant. The appellants appeal was given short shrift by the Division Bench of the High Court. It was said that no reasons were required to be given by the Government when it withdrew the acquisition proceedings in the absence of any pleadings with respect to malafides. It was also said that the decision of this Court in Special Land Acquisition Officer, Bombay V. Godrej & Boyce 1988 (1) SCR 590 which had been relied upon by the appellant did not apply as this Court had, according to the High Court, held that reasons were required to be given by the Government for withdrawing from the acquisition only in connection with acquisition proceedings initiated under Part VIII of the Act and not in cases where the proceedings had been initiated under Part II. Before concluding the narration of facts, we note that according to the appellant, during the pendency of these proceedings, respondents 5, 6 and 7 sold the land to the respondents 8 to

34. The respondents 5,6 and 7 have denied this. We do not propose to go into this dispute. The arguments have been wide ranging and the parties have submitted written notes of their arguments. But the basic grievance of the appellant is that the order withdrawing the acquisition under Section 48(1) of the Act was passed without any notice or hearing the appellant. According to the appellant, the right of the beneficiary to be heard has been recognized by the decision of this Court in Larsen & Toubro Ltd. v. State of Gujarat and Others 1998 (4) SCC 387. According to the respondents, the decision in Larsen & Toubro Ltd. is limited to the case of a company for which land had been acquired after formalities under Part VII of the Act had been completed. It was submitted that the principles of natural justice should not be extended to withdrawal of an acquisition for public purpose. This Court has consistently held that the requirements of natural justice will be read into statutory provisions unless excluded expressly or by necessary implication. In the case of Union of India V. Col. J.N. Sinha 1970 (2) SCC 458, this Court said: . It is true@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJ that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice.

The Constitution Bench in Olga Tellis V. Bombay Municipal Corporation 1985 (3) SCC 545 placed the onus to prove the exclusion of the rules of natural justice by way of exception and not as a general rule on the person who asserted it. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence.

Both these views were affirmed by the Constitution Bench in C.B. Gautam V. Union of India 1993 (1) SCC 78. Admittedly, the ap pellant was given no opportunity of being heard before the decision was taken by the respondent- Section authorities to withdraw the acquisition in exercise of 48 (1) of the Act. Section 48 (1) of the Act provides:

> 48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. (1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

The section does not in terms exclude the principles of natural justice. However, the section has been construed to exclude the owners right to be heard before the acquisition is withdrawn. This is because the owners grievances are redressable under Section 48 (2). No irreparable prejudice is caused to the owner of the land and, if at all the owner has suffered any damage in consequence of the acquisition proceedings or incurred costs in relation thereto, he will be paid compensation thereof under Section 48 (2) of the Act. [See: Amar Nath Ashram Trust Society V. Governor of U.P 1988 1 SCC 591 at p. 596] . [See: also Special Land Acquisition Collector v. Godrej Boyce : 1988 1 SCR 590]. But as far as the beneficiary of the acquisition is concerned there is no similar statutory provision. In contrast with the owners position the beneficiary of the acquisition may by withdrawal from the acquisition suffer substantial loss without redress particularly when it may have deposited compensation money towards the cost of the acquisition and the steps for acquisition under the Act have substantially been proceeded with. An opportunity of being heard may allow the beneficiary not only to counter the basis for withdrawal, but also, if the circumstances permitted, to cure any defect or shortcoming and fill any lacuna. No reason has been put forward by the respondents to exclude the application of the principle of natural justice to Section 48 (1) of the Act. The decision in Larsen & Toubro which relied upon an earlier decision in Amarnath Ashram Trust Society and Another V. Governor of U.P. and Others (supra) to hold that a beneficiary has a right to be heard before a notification under Section 48 (1) is issued, does not appear to be limited to acquisition for companies under Part VII of the Act as is contended by the respondents although the acquisition in that case had been made for a company for the purpose of setting up a housing colony. Both cases have also drawn a distinction between the rights of an owner and the beneficiary of the acquisition to object to withdrawal from the acquisition for the reasons noted earlier.. It may be noted that as in the case of the company, under Section 3

(f)(vi) the prior approval to the acquisition is required if an acquisition is made for the purpose of providing land for carrying out, inter-alia, any housing scheme sponsored by a Society registered under the Society Registration Act, 1860. This approval must be made after adequate enquiry. Again the issuance of the Notification under Section 4 is followed by filing and hearing of objections under Section 5 -A by the Collector. With the publication of declaration under Section 6, the Collector is to take steps for holding an inquiry under Section 9 after giving notice to all the persons interested. After completing the inquiry under Section 11, the Collector is required to pass an Award with the approval of the State government giving (i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

All these steps had been taken in the Appellants case . As said in Larsen & Toubro: After having done all this, the State Government cannot unilaterally and without notice to the company withdraw from acquisition. Opportunity has to be given to the company to show cause against the proposed action of the State Government to withdraw from acquisition.

A distinction may perhaps be drawn with beneficiaries who do not bear the cost of acquisition as the appellant has done in this case. But in the circumstances of this case, the State Government could not have withdrawn from the acquisition without hearing the appellant. This finding is sufficient to decide the appeal in favour of the appellant. In any event the decision to withdraw the acquisition under Section 48(1) is justiciable. This Court in Amarnaths case said: . the decision of the Government to withdraw from acquisition was based upon a misconception of the correct legal position. Such a decision has to be regarded as arbitrary and not bona fide. Particularly in a case where as a result of a decision taken by the Government the other party is likely to be prejudicially affected, the Government has to exercise its power bona fide and not arbitrarily. Even though Section 48 of the Act confers upon the State wide discretion it does not permit it to act in an arbitrary manner. Though the State cannot be compelled to acquire land compulsorily for a company its decision to withdraw from acquisition can be challenged on the ground that power has been exercised mala fide or in an arbitrary manner. Therefore, we cannot accept the submission of the learned counsel for the State that the discretion of the State Government in this behalf is absolute and not justiciable at all.

These observations were noted with approval in Larsen@@ JJJJJJ & Toubro.(supra) In the notification under Section 48(1)@@ JJJJJJJJJJJJJJJJJ impugned in this appeal no reason whatsoever has been given for withdrawal of the acquisition. All that said is: In exercise of the powers conferred by Sub-section (1) of Section 48 of the Land Acquisition Act, 1984, (Central act 1 of 1894) as amended by Karnataka Act No. 17 of 1961, the Government of Karnataka hereby withdraw from the acquisition of the Land specified below in the schedule in respect of which a Notification No. RD:177:AQT:91 dated 15th May 1992 issued under Section 6 of the Land Acquisition Act was published in Karnataka Gazette dated 21st May 1992 and 3rd September 1992 as required for public purpose, namely for formation and distribution to the Members of Houseless Harijans Employees

Association [R] Tumkur. In the affidavit affirmed on behalf of respondents, 1,3 and 4 on 3rd December@@ JJJJJJJJJJJJJJJJJJJJ 1998 it is said that the decision to withdraw was taken on@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ the basis of the opinion of the Law Department. The Law Department had opined that the acquisition had been sought to be made for a public purpose in terms of Section 3 (f)

(vi) of the Act, which required the housing scheme to be sponsored by any society registered under the Societies Registration Act. According to the Law Department, a society could be registered only in respect of the objects specified in clauses (a) to (g) of Section 3 of the Karnataka Society Registration Act. None of the objects mentioned in the Memorandum of Association of the appellant fell within these clauses of Section 3 of the State act. In the result, the acquisition of land on behalf of the Society in question for the purpose of forming layouts and distribution of sites to its members (which are not contemplated under Section 3 of the K.S.R. Act) is not permissible. Section 3(f) of the Act defines the expressions public purposes as including, inter-alia:

> (vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

but does not include acquisition of land for Companies.

In order therefore that an acquisition may be for a public purpose within the meaning of sub-section 3(f)(vi) as far as the case before us is concerned, the acquisition (1) should have been done with the prior approval of the appropriate Government; (2) must have provided for land for any housing scheme and (3) the housing scheme should have been sponsored by a Society registered under the Societies Registration Act, 1860 or any other corresponding law in the State. Of these three requirements, according to the Law Department, the third requirement was lacking. The opinion of the Law Department and consequently the basis of the impugned order are unacceptable for several reasons. Admittedly the appellant is registered under the Karnataka Societies Registration Act. What appears to be the contention of the respondents is that the appellant could not have been registered under the State Act. It is nobodys case that the registration of the appellant has in fact been withdrawn or cancelled under the Karnataka Act. Section 3 of the Karnataka Act specifies the Societies to which the Karnataka Act applies. The Societies must be formed for any one or more of the seven objects mentioned. The last two objects mentioned in the Karnataka Act are in fact included in the Memorandum of Association of the appellant as being two of the aims and objects of the appellant. The opinion of the Law Department that none of the objects of the Appellant were within the objects specified in Section 3 was factually incorrect. It has not been shown that if some of the objects with which a Society is established are invalid and others are valid, the registration of the Society is ipso facto vitiated. On the contrary, it appears from the records that on petitions being filed for cancellation of the appellants registration, by letter dated 23rd March 1991, the District

Registrar did not cancel the registration but said, Therefore, it is hereby endorsed that the objects which are in accordance with Section 3 of the said Act are valid and remained (sic) not valid. Thus, it cannot be asserted with any certainty that the appellant could not have been and cannot continue to be registered under the Karnataka Act. It is to be noted that under Section 8 (2) of the Karnataka Act, a society may be registered only after the Registrar is satisfied that all the requirements of the Act and the rules made thereunder have been complied with. One cannot assume, that the appellants case did not come within Section 3 (f)

(vi) of the Act. It is therefore unnecessary to determine whether there is a conflict between Section 3 (f)(vi) of the Act and Section 3 of the Karnataka Act nor do we propose to decide which of the two would prevail under Article 254 of the Constitution. Indeed the learned Single Judge found no impediment in an acquisition for the appellant despite Section 3 of the Karnataka Act when he said: all the members of the Society belong to the weaker section of the society and they do not have residential sites to have a roof over their head. When such being the case it is appropriate for the State Government to take steps to acquire lands having got deposited substantial amount towards the cost of acquisition with a view to acquire certain extent of land to provide residential sites to the members of the society. Therefore, in the event if the petitioner society come forward with a scheme and submit the same to the State Government, the State Government may take necessary steps to initiate acquisition proceedings after sanctioning the prior approval provided if the petitioner-society does not withdraw the amount so deposited by it for the purpose of acquisition of the land.

In fact neither the Single Judge nor the Division Bench of the High Court appear to have accepted this reason as ground for withdrawing the acquisition. Furthermore, this very objection had been considered at every level and rejected on 14th November 1991 after which the Notification under Section 6 was issued and published declaring that the land was required for a public purpose. Once this was done, under sub-Section (3) of Section 6, the said declaration was conclusive evidence that the land is needed for a public purpose... The stage for questioning the public purpose aspect of the acquisition is over and cannot be reopened by the State nor can the respondents/owners raise this issue without challenging the Notification under Section 6. They had challenged it under Art. 226 but then withdrew their writ petition. In this context it may be noted that the appellants allegation that the sudden volte-face of the State Government was by reason of the pressure brought by respondent No. 2 appears to have some substance. Although the respondent No. 2, both before the High Court and before us, denied his involvement in the matter, the records reveal that at least by letter dated 30th December 1991, the respondent No. 2 had written to the Revenue Department espousing the cause of respondent owners seeking withdrawal of the acquisition. The basis on which the learned Single Judge dismissed the appellants writ petition was that there was no approval of the appropriate Government to the acquisition, namely, the absence of the third factor noted above. This was not the ground on which withdrawal from the acquisition had been made and it was not open to the State Government to justify its decision on any other ground. As held by this Court in Mohinder Singh Gill and Another v. The Chief Election Commissioner, New Delhi and Others 1978 (1) SCC 405 at p. 417: ..when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it

comes to Court on account of a challenge, get validated by additional grounds later brought out.

Besides, what had been stated in the affidavit of the State- respondents is the petitioner society has not submitted any housing scheme and as such there could not have been prior approval from the Government. In other words, the fact of prior approval has not been denied. What is said is because no housing scheme had been submitted by the appellant there could not have been prior approval. No finding was however given by the Single Judge on this. All that was said was: The learned Govt. Advocate submitted that in the instant case there is no scheme submitted by the society and there is no such approval of the State Government. If that is so, the entire acquisition proceedings initiated treating it as a public purpose itself is vitiated.

The Division Bench did not at all address itself to this aspect of the matter. In the absence of any finding on the existence of the scheme, the submission of the State Government regarding prior approval should have been rejected. In fact it appears from the records a housing scheme had been submitted by the appellant. Apart from the lay out plan, the number, the sizes and positions of the plots, the user, the number of allottees, the basis of allotment, the finances for the purposes, the particulars of the membership had all been submitted by the appellant. The organisational set up to administer the scheme was indicated in its Memorandum of Association, which also ensures that the land would be utilised for the purposes for which it was being acquired. The clearance of the Town Planning Authority had been obtained. The particulars were verified and found satisfactory in all respects by the authorities. Nothing more could be asked for from the propounder of a housing scheme. The respondents then submitted that the letter dated 15th March, 1991 did not amount to a prior approval because (i) it did not indicate that the scheme was approved (ii) it was not in accordance with Art. 166 of the Constitution and (iii) the Government could not rely on material collected by it before the first notification under Section 4(1) of the Act was issued. No form of the prior approval required under Section 3(f)(vi) of the Act has been specified in the Act itself. What the section in terms requires is the prior approval to the acquisition for the purpose specified. This was expressly given. That the letter dated 15.3.91 was issued by the Government is not in dispute. The lack of compliance with Article 166 did not render it a nullity. As held by the Constitution Bench of this Court in 1964 (6) SCR 368: it is, therefore, settled law that provisions of Art.166 of the Constitution are only directory and not mandatory in character and, if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor... [See also Dattatreya v. The State of Bombay (1952 SCR 612) Major E.G. Barsay v. State of Bombay: AIR (1961) SC 1762] No doubt, in Gulabra v. State of Gujarat 1996 (2) SCC 26, it was held that a decision of Revenue Minister was not an order of the Government because of non compliance with Article 166. But in that case there was a conflict between the Revenue Department and the Urban Development & Urban Housing Department whether proceedings under S. 4(1) of the Act were to be dropped or not. The Revenue Minister was of the view that it should be dropped. The Urban Development Department disputed this. The Rules of Business framed by the State under Art. 166(3) specifically provided that in such a controversy , the matter was to be submitted to the Chief Minister for placing before the Cabinet. This was not done nor was the order of the Revenue Minister communicated to the appropriate authority. The Revenue Ministers decision which was noted on the file was sought to be enforced by the owners. This was negatived by the Court. The decision is factually distinguishable and cannot be construed as

upsetting the settled law as noted in Chitralekhas case. The approval in this case was a culmination of a lengthy exercise which started in 1983 with two prior abortive attempts to complete the acquisition. This is evident from the language of the letter dated 15.3.1991 itself. The genuineness of the need of the appellant has not been doubted even by the High Court, unlike the case of HMT House Building Cooperative Society v. Syed Khader & Ors. (1995)2 SCC 677 where it was found that the Government had acted at the instance of a middleman and the acquisition was sought for the ultimate commercial utilization of the land. But, the respondents contend, the materials on which the appellant sought to rely to show that the prior approval in 1991 was granted after being satisfied about the housing scheme, were submitted prior to the earlier notifications under Section 4(1). According to the respondents, with the dropping of the earlier notifications, the entire proceedings on the basis of which they were issued became non est. They have cited State of Gujarat V. Patel Chaturbhai Narsibhai 1975 1 SCC 583 in support of this submission. The owner- respondents further submission was that the acquisition was commenced under Part VII and that the material gathered may have been relevant for an acquisition under Part VII but could not be relied upon for proceedings under Part II. These are not pleas which were taken by the respondents at any stage. Both issues raise@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ mixed questions of law and fact. As far as questions of@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJ fact are involved we cannot entertain them and as principles of law both submissions are untenable. Patel Chaturbhai Nasirbhai (supra) cited by the respondents dealt with acquisition for a company in accordance with Part VII of the Act and the Land Acquisition (Companies) Rules, 1963. Part VII of the Act contains sections relevant to the acquisition of land for Companies, namely, Section 38-A to Section 44-B. Section 39 provides that the procedure commencing with the declaration under Section 6 and terminating with the distribution of compensation and possession of the land would not put into force to acquire land for any company under Part-VII without: (i) the previous consent of the appropriate Government, and

(ii) execution of an agreement between the company and the appropriate Government under Section 41.

It is only after both the requirements are satisfied that further steps in the acquisition of land for the company can be taken. In Patel Chaturbhai Narsibhai and Others(supra) the first notification under Section 4 of the Act was issued on 4th March 1961. After an inquiry was held, the State Government gave its consent. On 22nd August 1961 an agreement was entered into between the State Government and the Company. On 9th July 1965, the Land Acquisition (Gujarat Unification and Amendment) Act, 1965 came into force amending Section 39 of the Act. The Notification dated 4th March 1961 was cancelled on 28th September 1965. The next day a fresh notification under Section 4 was issued. The dispute before this Court was whether the conditions for the issuance of the second Notification had been satisfied. Admittedly, a second agreement was entered into between the Company and the State Government after the second Notification under Section 4 (1) on 13th January 1969 i.e. subsequent to the second Notification. The State Government sought to rely upon the earlier agreement dated 22nd August 1961. This was negatived. It was said: The enquiry pursuant to the notifications in the year 1961 and previous to the fresh notifications in 1965 is of no effect in law for two principal reasons. First, the 1961 notification was cancelled, and, therefore, all steps taken thereunder became ineffective. Second, the enquiry under Rule 4 in 1961 was held without giving opportunity to the land owner respondent, and, therefore, the enquiry is invalid in

law.

To begin with as far as the case before us is concerned there is no basis for the submission that the acquisition was originally commenced under Part VII. The first Notification is not on record. The State has given no reason for destruction of the file when the matter was pending for consideration before this Court. However, after the publication of the first notification under Section 4(1) on 6th August 1987 the respondents-owners had objected. The objections included a submission that the Society is not a registered Society. The second objection was that the acquisition was not for a public purpose. In dealing with these objections by letter dated 12th /19th November 1987 written by the Assistant Commissioner, Tumkur to the Revenue Commissioner it was affirmed that the appellant was registered and the purpose of acquisition is housing. As such the proposed acquisition falls under Section 3(e)(vi) read with Section 3 (e) (vii). Presumably the Assistant Commissioner meant Section 3 (f) (vi) and 3(f) (vii). The respondents then relied upon a letter dated 27th March 1987 sent by the Under Secretary, Revenue Department to the Special Deputy Commissioner, Tumkur District, Tumkur which reads as follows: While returning the records, I am directed to convey the approval of Government to initiate acquisition proceedings under Karnataka Land Acquisition (Company) Rules to acquire an extent of 15-00 acres of land in S.No.49 of Maralur village, Tumkur taluk in favour of State Government Employees Association, Tumkur.

Whatever may be said in the internal correspondence, there is no evidence that the matter was proceeded with under Part VII at all. After the first notification under Section 4(1) was issued by letter dated 16th April 1988 sent by the Under Secretary to the Deputy Commissioner, Tumkur, it was stated: While enclosing the records received from the Assistant Commissioner, Tumkur under his letter cited above, I am directed to request you to send the recommendation of the District Level Committee constituted in G.O.No. RD 193 AQW 185, dated 20.1.1986, keeping in view the guidelines issued in Circular of even number dated 23.4.1986, including the existent of land to be acquired to provide house sites to its members.

It was pursuant to this directive that enquiries were held and the District and State Level committees enquired into and verified the appellants case before recommending it. The material was relevant not only to the question of public purpose under Section 4 but could also form the basis of an approval under Section 3 (f)(vi). It is not disputed that the material was considered when the second and the third notifications under Section 4(1) were issued and both these Notifications clearly state that the acquisition was being made for a public purpose and not under Part VII of the Act. Therefore, even if the acquisition was originally commenced under Part-VII it was continued under Part II. A converse situation occurred in Amarnath Ashram Trust Society (supra), where although the notification under Section 4 (1) was issued for a public purpose, the declaration under Section 6 showed that it was under Part VII. The declaration clearly referred to the inquiry made under Rule 4 of the Land Acquisition (Companies) Rules, 1963 and the agreement entered into between the appellant-Society and the State. Moreover, it was not pleaded by the State before the High Court that the acquisition was for a public purpose and not under Chapter VII of the Act. Therefore, it was held that it was not open to the counsel for the state to raise a contention which was contrary to the case pleaded before the High Court. In this case the earlier notifications were not cancelled nor is there any question of any agreement under Section 41 being superseded by another.

No further steps could be taken on the earlier notifications only because of administrative delay which crossed the period of limitation provided under Section 6(1)(A). While the proceedings under Section 4 (1) may come to an end as a matter of law, it does not mean that the material on the basis of which the earlier Notification was issued ceased to exist as a matter of fact. Section 4 (1) read with Section 3 (f) (vi) of the Act indicates that there are two separate functions to be performed by the State Government. Under Section 4 (1) it must prima facie come to the conclusion that the land proposed to be acquired is required for a public purpose and under Section 3 (f)(vi), such tentative conclusion must be coupled with specific approval to acquire the land for the purposes specified for the benefit of the registered society or co- operative society, as the case may be. The Act does not specify the material on which either the tentative conclusion to Section 4 (1) or approval under Section 3(f)(vi) are to be based. In M/s Fomento Resorts and Hotels Ltd. V. Gustavo Ranato DA Cruz Pinto and Others 1985 (2) SCC 152 it was held that the view of the Government that land is needed either for public purpose or for a company may be based either on independent enquiry or from reports and information received by the government or even from an application by the company concerned. The same sources may provide information for granting prior approval under Section 3(f) (vi). There is no prohibition on the State Government acting on the basis of material already on record provided the material is sufficient, relevant and genuine. The material in this case although collected prior to the issuance of the second Notification was all these and according to the letter of approval, the matter was minutely examined by the State Government in consultation with the Law Department before granting the approval for the third and final notification in 1991. The final submission of the owner respondents was that the present acquisition was in fact being made under Part VII and that none of the provisions in Part-VII had been followed. The third Notification ex facie states that it was issued for public purposes under Part II of the Act. The finding of the learned Single Judge also was: it is clear that the acquisition proceedings are initiated under Part II of the Act and not under Part VII of the Act. Furthermore, the only stumbling-block raised by the respondent-owners all along was the issue of the applicability of Section 3

(f)(vi) only because the acquisition was under Part II. It was commenced and continued as such. The respondents argument that the procedure followed was a hybrid procedure of Part II and Part VII, therefore, is erroneous. From all this, the ultimate position which emerges is that the acquisition in favour of the appellant was properly initiated by publication of the Notification under Section 4 (1) and by the declaration issued under Section 6. The withdrawal of the acquisition under Section 48 (1) was vitiated not only because the appellant was not heard but also because the reason for withdrawal was wrong. The High Court erred in dismissing the appellants writ petition. The decision of the High Court is accordingly set aside. The impugned Notification under Section 48(1) is quashed and the appeal is allowed with costs.