Pratibha Nema & Ors vs State Of M.P. & Ors on 30 July, 2003

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Bench: K.G. Balakrishnan, P. Venkatarama Reddi

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           CASE NO.:
Appeal (civil)  7133 of 1999

PETITIONER:
Pratibha Nema & Ors.


RESPONDENT:
Vs.

State of M.P. & Ors.


DATE OF JUDGMENT: 30/07/2003

BENCH:
K.G. BALAKRISHNAN & P. VENKATARAMA REDDI.


JUDGMENT:
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J U D G M E N T WITH Civil Appeal Nos. 7134, 7135, 7136 & 7138 of 1999 P. VENKATARAMA REDDI, J.

Facts and Contentions :

The acquisition of 73.3 hectares of dry land situate in Rangwasa village of Indore District and Tehsil belonging to the appellants and others is the subject-matter of challenge in these appeals filed by the landholders. The said extent of land was notified for acquisition under Section 4(1) of the Land Acquisition Act (hereinafter referred to as 'Act') for the alleged public purpose of 'establishment of diamond park'. This parcel of land together with an extent of 44.8 hectares of Government land was meant to be placed at the disposal of the Industries Department and/or Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd. (hereinafter referred to as 'the Nigam') for the purpose of allotting the same to various industrial units-the foremost among them being the 9th respondent-Company, for setting up diamond cutting and polishing units with modern technology. The proposal in this regard emanated from the General Manager of District Industries Centre, on the initiative taken by the 9th Respondent. After the land was located by a joint inspection committee of officials, the Government of Madhya Pradesh (Commerce & Industries Department) had given sanction 'in principle' for the acquisition. The District Collector, Indore through his letter dated 24.1.1996 sought the approval of the Commissioner, Indore Division to invoke Section 17(1) of the Act in order to expedite the process of acquisition. In that letter, the Collector mentioned that prestigious exporters from India as well as foreign countries were likely to establish their units in this park which would generate good deal of foreign exchange and create employment potential. The Commissioner accorded his approval by a communication dated 29.1.1996. This resulted in the issuance of the notification under Section 4(1) of the Act on 30th June, 1996 by the Collector & Ex-officio Deputy Secretary to Government, to whom it appears the powers were delegated. By the same Notification, the enquiry under Section 5A was dispensed with. It was indicated in the Notification that the land map could be inspected in the office of the SDO, Indore and General Manager, District Industries Centre. A few days later i.e., on 9.2.1996, the declaration under Section 6 of the Act was published. The Collector (Land Acquisition) was directed to take possession after the expiry of 15 days from the date of issuance of notice under Section 9(2) of the Act. Before the possession was taken, the writ petitions under Article 226 of the Constitution were filed and an order of status quo was granted. The writ petitions and the Letters Patent Appeals were dismissed. In the meanwhile, it appears that an interim award was made for a sum of Rs.2,14,91,115 representing 80% of the estimated compensation amount. The SLPs filed in this Court were disposed of on 11.10.1996 on the basis of the representation made by the learned counsel for the State of Madhya Pradesh that the Notification under Section 6 will be withdrawn and the procedure under Section 5A will be followed. Accordingly, the Collector, Indore District published a Notification on 15.10.1996 withdrawing the declaration under Section 6. After due enquiry, the Land Acquisition Officer submitted a report under Section 5A overruling the objections put forward by the appellants. On a perusal of the report, the Collector as well as the Commissioner decided to go ahead with the acquisition. Accordingly, a fresh Notification under Section 6 was issued on 3.1.1997. As in the earlier Notification, the public purpose was mentioned as 'establishment of a diamond park'. This was again challenged by

the aggrieved landholders including the appellants. A Division Bench of the High Court dismissed the writ petitions which were filed by the present appellants having interest in about 63 acres in Survey No. 684. Against that judgment, these appeals by special leave have come up. This Court, while taking note of certain additional facts disclosed in I.A.No. 2/2001, passed an order on 29.8.2001 formulating four questions in respect of which the findings of the High Court were called for. The following are the four questions:

1) Whether M/s. B. Arun Kumar International Ltd. deposited a sum of Rs.3 crores for payment of compensation to the land holders for acquisition of land for them.

2) Whether in view of the facts stated in I.A.No.2/2001 and the counter affidavit and further affidavits the acquisition of land was for the Company and not for public purpose.

3) If the findings on question No.1 & 2 are in the affirmative, whether any subsequent withdrawal of compensation amount by M/s. Arun Kumar International Ltd. would not affect the invalidity of notification issued under Section 4 of the Act.

4) If the findings on issues Nos. 1 & 2 are in the affirmative, whether the State Government also contributed partly towards compensation to be paid to the land holders and in its absence the acquisition of land for public purpose is invalid.

The questions were framed in the light of the appellants' contention that the acquisition was not for a public purpose and it was only meant to benefit the 9th Respondent-Company and its associates which contributed its own funds for facilitating the acquisition. The matters were directed to be listed on receipt of the findings of the High Court with a further direction not to treat the cases as part-heard.

The High Court has, by its order dated 5-7-2002 recorded its findings on the four points and transmitted the same to this Court. All the findings are against the appellants and naturally, therefore, they are being challenged.

Broadly, four contentions have been urged before us. They are:

1. Acquisition is not for a public purpose. The entire acquisition is a subterfuge to hand over the acquired land to the Company in the guise of acquisition for a public purpose. Even the amount paid towards compensation was not out of public revenues, but out of the money provided by the Company for the specific purpose of compensation. 2. The public purpose stated in the Notifications under Sections 4 & 6 is vague. 3. The area of the land proposed to be acquired is far in excess of reasonable requirements and

4. Environmental considerations were not kept in view while taking a decision to acquire the land for industrial purpose.

Analysis of relevant provisions and the settled legal position :

In order to appreciate the contentions set out above in proper perspective, it would be appropriate to advert to certain basic provisions of the Act and recapitulate the well settled principles relating to public purpose and acquisition of land under Part II and Part VII of the Act. Section 4(1) which occurs in Part II of the Act contemplates a notification to be published in the official gazette etc., whenever it appears to the appropriate Government that land in any locality is needed for any public purpose or for a company. Thereupon, various steps enumerated in sub-Section (2) could be undertaken by the authorized officer. There is an inclusive definition of 'public purpose' in clause (f) of Section 3. This clause was inserted by Central Act 68 of 1984. Many instances of public purpose specified therein would have perhaps been embraced within the fold of public purpose as generally understood. May be, by way of abundant caution or to give quietus to legal controversies, the inclusive definition has been added. One thing which deserves particular notice is the rider at the end of clause (f) by which the acquisition of land for Companies is excluded from the purview of the expression 'public purpose'. However, notwithstanding this dichotomy. speaking from the point of view of public purpose, the provisions of Part II and Part VII are not mutually exclusive as elaborated later.

The concept of public purpose (sans inclusive definition) was succinctly set out by Batchelor, J. in a vintage decision of Bombay High Court. In Hamabai Framjee Petit Vs. Secretary of State for India [AIR (1914) PC 20], the Privy Council quoted with approval the following passage from the judgment of Batchelor J:

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

The Privy Council then proceeded to observe that prima facie the Government are good judges to determine the purpose of acquisition i.e., whether the purpose is such that the general interest of the community is served. At the same time, it was aptly said that they are not absolute Judges. This decision of the Privy Council and the words of Batchelor, J. were referred to with approval by a Constitution Bench in Somawanti Vs. State of Punjab [AIR (1963) SC 151] and various other decisions of this Court.

We may now advert to Section 6. It provides for a declaration to be made by the Government or its duly authorized officer that a particular land is needed for a public purpose or for a Company when

the Government is satisfied after considering the report if any made under Section 5A(2). It is explicitly made clear that such declaration shall be subject to the provisions of Part VII of the Act which bears the chapter heading 'Acquisition of Land for Companies'. Thus, Section 6 reiterates the apparent distinction between acquisition for a public purpose and acquisition for a Company. There is an important and crucial proviso to Section 6 which has a bearing on the question whether the acquisition is for a public purpose or for a Company. The second proviso lays down that "no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, wholly or partly, out of public revenues or some fund controlled or managed by local authority". Explanation 2 then makes it clear that where the compensation to be awarded is to be paid out of the funds of a Corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues. Thus, a provision for payment of compensation, wholly or partly, out of public revenues or some fund controlled or managed by a local authority is sine qua non for making a declaration to the effect that a particular land is needed for a public purpose. Even if the public purpose is behind the acquisition for a Company, it shall not be deemed to be an acquisition for a public purpose unless at least part of the compensation is payable out of public revenues which includes the fund of a local authority or the funds of a Corporation owned or controlled by the State. However, it was laid down in Somavanti's case that the notification under Section 6(1) need not explicitly set out the fact that the Government had decided to pay a part of the expenses of the acquisition or even to state that the Government is prepared to make a part of contribution to the cost of acquisition. It was further clarified that the absence of a provision in the budget in respect of the cost of acquisition, whole or part, cannot affect the validity of the declaration. The majority Judges of the Constitution Bench also clarified that a contribution to be made by the State need not be substantial and even the token contribution of Rs.100 which was made in that case satisfied the requirements of the proviso to Section 6(1). The contribution of a small fraction of the total probable cost of the acquisition does not necessarily vitiate the declaration on the ground of colourable exercise of power, according to the ruling in the said case. Following Somavathi, the same approach was adopted in Jage Ram Vs. State of Haryana [(1971) 1 SCC 671]. The question, whether the contribution of a nominal amount from the public exchequer would meet the requirements of the proviso to Section 6, had again came up for consideration in Manubhai Jehtalal Patel Vs. State of Gujarat [(1983) 4 SCC Page 553]. D.A. Desai, J. after referring to Somvanti's, speaking for the three Judge Bench observed thus:

> "It is not correct to determine the validity of acquisition keeping in view the amount of contribution but the motivation for making the contribution would help in determining the bona fides of acquisition. Further in Malimabu case [AIR (1978) SC 515] contribution of Re 1 from the State revenue was held adequate to hold that acquisition was for public purpose with State fund. Therefore, the contribution of Re 1 from public exchequer cannot be dubbed as illusory so as to invalidate the acquisition."

In Somavanti's case, the following note of caution was sounded:

> "We would, however, guard ourselves against being understood to say that a token contribution by the State towards the cost of acquisition will be sufficient compliance

> with the law in each and every case. Whether such contribution meets the requirements of the law would depend upon the facts of every case. Indeed the fact that the State's contribution is nominal may well indicate, in particular circumstances, that the action of the State was a colourable exercise of power. In our opinion 'part' does not necessarily mean a substantial part and that it will be open to the Court in every case which comes up before it to examine whether the contribution made by the State satisfies the requirement of the law. In this case we are satisfied that it satisfies the requirement of law."

A three Judge Bench of this Court in Indrajit C. Parekh Vs. State of Gujarat [(1975) 1 SCC 824], without much of elaboration, relegated the observations in the above passage to a very narrow confines by stating thus:

> "In view of the decision in this case that a nominal contribution out of public revenues would satisfy the requirement of the proviso to Section 6(1) the observation "whether such contribution meets the requirement of the law would depend upon the facts of every case" must necessarily be taken to refer to the requirement of some law other than the proviso to Section 6(1). No such law was pointed out to us; and it is not necessary for the purposes of this appeal to enter on a discussion as to what such other law could be."

Another important provision is Sub-Section (3) of Section 6 which enjoins that the declaration (required to be published in the official gazette etc.) shall be conclusive evidence that the land is needed for a public purpose or for a Company and on publication of declaration, the appropriate Government is enabled to acquire the land in accordance with the other provisions of the Act. This sub- Section came up for interpretation of this Court in Somawanti's case (supra). The Court emphasised that the conclusiveness contemplated by sub-Section (3) is not merely regarding the satisfaction of the Government on the question of need but also with regard to the question that the land is needed for a public purpose or for a Company, as the case may be. However, the learned Judges highlighted an important exception to the finality or conclusiveness of the declaration under Section 6(1). It was observed thus:

> "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."

The main contention of the learned senior counsel for the appellant, as already noticed, rests on the plea of colourable exercise of power.

Colourable exercise of power or mala fides in the province of exercise of power came up for discussion in State of Punjab Vs. Gurdial Singh [AIR (1980) SC Page 319]. In the words of Krishna Iyer, J.-

> "Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal..... When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion..... Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act."

The above exposition of law unfolds the right direction or the line of enquiry which the Court has to pursue to test the validity of declaration made under Section 6(1) exalted by the legal protection accorded to it under sub-Section (3).

In order to proceed on these lines, the ambit and contours of public purpose as understood by this Court in certain decided cases has to be taken note of. We have already noticed the broad and general meaning of the expression 'public purpose' as stated by Batchelor, J. nearly a century back. In the particular context of setting up industries by private enterprise, this Court's perspective of public purpose is discernible from certain decided cases to which we shall make reference.

In Jage Ram's case (supra) the public purpose mentioned in the notifications under Sections 4 & 6 was "the setting up a factory for the manufacture of China-ware and Porcelain-ware". The State Government had contributed a sum of Rs.100 as was done in the case of Somavanti (supra) towards the cost of the land. The question arose whether it was necessary for the Government to proceed with the acquisition under Part VII of the Act. Holding that acquisition under Part VII need not have been resorted to, this Court proceeded to discuss the question whether the acquisition was intended for a public purpose. K.S. Hegde, J. speaking for the Court observed thus:

> "There is no denying the fact that starting of a new industry is in public interest. It is stated in the affidavit filed on behalf of the State Government that the new State of Haryana was lacking in industries and consequently it had become difficult to tackle the problem of unemployment. There is also no denying the fact that the industrialization of an area is in public interest. That apart, the question whether the starting of an industry is in public interest or not is essentially a question that has to be decided by the Government. That is a socio-economic question. This Court is not

> in a position to go into that question. So long as it is not established that the acquisition is sought to be made for some collateral purpose, the declaration of the Government that it is made for a public purpose is not open to challenge. Section 6(3) says that the declaration of the Government that the acquisition made is for public purpose shall be conclusive evidence that the land is needed for a public purpose. Unless it is shown that there was a colourable exercise of power, it is not open to this Court to go behind that declaration and find out whether in a particular case the purpose for which the land was needed was a public purpose or not : see Smt. Somavanti and Others Vs. The State of Punjab and Raja Anand Brahma Shah Vs. State of U.P. On the facts of this case, there can be hardly any doubt that the purpose for which the land was acquired is a public purpose."

In Somavanti's case, setting up a factory for the manufacture of refrigeration compressors and ancillary equipment, was held to subserve public purpose. The importance of such industry to a State such as Punjab which had surplus food and dairy products, the possible generation of foreign exchange resources and employment opportunities were all taken into account to hold that public purpose was involved in establishing the industry. It was observed "on the face of it, therefore, bringing into existence a factory of this kind would be a purpose beneficial to the public even though, that is a private venture." The decision in Jageram's case was cited with approval by this Court in Bajirao T. Kate Vs. State of Maharashtra [(1995) 2 SCC Page 442]. In R.L. Arora Vs. State of Uttar Pradesh [AIR (1964) SC Page 1230] a Constitution Bench of this Court observed that there was definite public purpose behind the acquisition of land for taking up works in connection with the setting up of a factory for production of textile machinery parts. However, that was in the context of a case of acquisition under Part VII.

These decisions establish that a public purpose is involved in the acquisition of land for setting up an industry in private sector as it would ultimately benefit the people. However, we would like to add that any and every industry need not necessarily promote public purpose and there could be exceptions which negate the public purpose. But, it must be borne in mind that the satisfaction of the Government as to the existence of public purpose cannot be lightly faulted and it must remain uppermost in the mind of the Court. Having noted the salient provisions and the settled principles governing the acquisition for a public purpose, it is time to turn to part VII dealing with acquisition of land for Companies. The important point which we would like to highlight at the outset is that the acquisition under Part VII is not divorced from the element of public purpose. The concept of public purpose runs through the gamut of Part VII as well.

'Company' is defined to mean by Section 3(e) as (i) a Company within the meaning of Section 3 of the Companies Act other than Government Company, (ii) a Society registered under the Societies Registration Act other than a Co-operative Society referred to in clause (cc) and (iii) a Co-operative Society governed by the law relating to the Co-operative Societies in force in any State other than a Co-operative Society referred to in clause (cc). An industrial concern employing not less than 100 workmen and conforming to the other requirements specified in Section 38-A is also deemed to be a Company for the purposes of Part VII. In order to acquire land for a Company as defined above, the previous consent of the appropriate Government is the first requirement and secondly the execution

of agreement by the Company conforming to the requirements of Section 41 is another essential formality. Section 40 enjoins that consent should not be given by the appropriate Government unless it is satisfied that (1) the purpose of the acquisition is to obtain land for erection of dwelling houses for workmen or for the provision of amenities connected therewith; (2) that the acquisition is needed for construction of some building or work for a Company which is engaged or about to engage itself in any industry or work which is for a public purpose; and (3) that the proposed acquisition is for the construction of some work that is likely to be useful to the public. The agreement contemplated by Section 41 is meant to ensure the compliance with these essentialities. It is also meant to ensure that the entire cost of acquisition is borne by and paid to the Government by the Company concerned. Thus, it is seen that even in a case of acquisition for a Company, public purpose is not eschewed. It follows, therefore, that the existence or non-existence of a public purpose is not a primary distinguishing factor between the acquisition under Part II and acquisition under Part VII. The real point of distinction seems to be the source of funds to cover the cost of acquisition. In other words, the second proviso to Section 6(1) is the main dividing ground for the two types of acquisition. This point has been stressed by this Court in Srinivasa Co-operative House Building Society Limited Vs. Madam G. Sastry [(1994) 4 SCC Page 675] at paragraph 12:

> "...In the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition is for a public purpose and that the cost of acquisition should be borne, wholly or in part, out of public funds..."

The legal position has been neatly and succinctly stated by Wanchoo, J. speaking for the Constitution Bench in R.L.Arora Vs. State of Uttar Pradesh [AIR (1962) SC Page 764]. This is what has been said:

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

> part of compensation may be paid out of public revenues or some fund controlled or managed by a local authority. In such a case though the acquisiton may look as if it is primarily for a company it will be covered by that part of Section 6 which lays down that acquisition may be made for a public purpose if the whole part of the compensation is to be paid out of the public revenues or some fund controlled or managed by a local authority. Such was the case in Pandit Jhandu Lal Vs. State of Punjab [AIR (1961) SC 343]..... .....It is only where the acquisition is for a company and its cost is to be met entirely by the company itself that the provisions of Part VII apply."

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

Whether 2nd proviso to Section 6(1) has been complied with Now, we come back to the facts of the present case and test the validity of acquisition, keeping in view the principles discussed supra. First, we shall address the question argued at length-viz., whether there was compliance with the second proviso to Section 6(1). Obviously, if no part of compensation amount is to be paid out of the public revenues, then, the declaration that the land was needed for a public purpose could not have been validly made and the acquisition cannot be considered to be for a public purpose. As already noticed, it was held in Somawanti's case that the notification under Section 6(1) need not on the face of it contain a recital that the Government had decided to bear a part of the cost of acquisition or it was prepared to make a part of contribution. Even the absence of budgetary provision shall not affect the validity of declaration, it was observed. Nevertheless, there should be definite indication to the effect that the Government is going to bear at least a part of the cost of acquisition. Naturally, the Court has to look into the record including pleadings and it is not impermissible to take into account the events prior to and subsequent to the declaration. The High Court in the findings submitted to this Court noted the statement made on behalf of the Government that it was prepared to make necessary budgetary allotment for the amount of compensation payable. However, no record has been produced either before the High Court or before this Court reflecting the Government's decision to meet a part of the expenses of acquisition. But, that is really immaterial as there is sufficient material to hold that the Nigam which is undisputedly owned and controlled by the State has itself proceeded to make payment of substantial amount towards compensation even at the initial stages in anticipation of the interim award that was made on 7.6.1996. Payment of Rs. 1.5 crores was made by Respondent No. 6 (Nigam) through the General Manager, District Industries Centre by means of a cheque dated 26.2.1996. This gives an unequivocal pointer that the State owned Corporation, namely the Nigam, had to bear the cost of acquisition and as a first step, it

made the payment of Rs.1.5 crores. The assurance on the part of the State Government to sanction the funds, would indicate that in case of deficit, the Government is prepared to make the necessary financial provision to enable the Nigam to meet the cost of acquisition. In the document entitled "Industrial Policy and Action Plan, 1994" it is stated at para 7.19 that "the Nigam will work as the nodal agency for the development of large and medium industries in the State".

According to the appellants, the amount paid by Nigam to the Land Acquisition Collector was out of the money received from M/s. Arun Kumar International Limited (hereinafter referred to as 'AKI Ltd.') towards the advance payment of the compensation amount and it was merely passed on to the Land Acquisition Officer. It is submitted that but for the amount provided by AKI Ltd., no funds were available with the Nigam for making such payment. The sequence of events coupled with the fact that the respondents have not produced the covering letter that would have accompanied the Cheque gives rise to a presumption of fact that the Cheque issued by the Company towards the compensation amount was simply made over to the Land Acquisition Officer by the Nigam. Therefore, it is stressed that the source of funds was not public revenue, but, it was the private fund of the beneficiary Company. On the other hand, it has been the stand of the respondents that the Cheque issued by the Company was towards advance lease premium and such payment was made in terms of the Memorandum of Understanding (MOU). The High Court found sufficient support for the plea taken by the Nigam and the State Government from the documentary evidence viz., the receipt dated 20.2.1996 passed on to AKI Ltd., and the entries in the cash book. In fact, the original receipt book was placed before us in the course of hearing. There is absolutely no basis to infer that the particular receipt was prepared at a later stage after the dispute cropped up. Moreover, the MOU entered into between the Nigam and the two Companies, namely, M/s B. Arun Kumar Group of Companies and Rosy Blue of Antwerp, Belgium makes it clear that the said Companies were willing to deposit the amount of lease premium with the Nigam in advance. It is made clear in the sur-rejoinder affidavit filed in the High Court and it has not been disputed that the Nigam has been vested with the power to allot land to the industrial units, execute lease deeds and charge premium. True, there is nothing on record to show that the lease premium or the advance amount payable was determined by the time the Cheque was issued by the Company. The payment of any amount at that stage on account of lease premium was rather premature, but, the fact remains that under the terms of MOU, the Companies which were parties to the MOU did express their willingness to deposit the amount of lease premium in advance. Viewed from another angle, no interim compensation was determined by the time the payment was made by the Company and there was no reference in the MOU to the compensation amount at all and if so, there is no reason to presume that the amount was deposited by the Company as advance compensation amount. In this state of affairs, the High Court was well justified in relying on the documents/books maintained in the ordinary course of business and recording a conclusion that the Cheque for Rs.3 crores was issued by AKI Ltd., towards advance lease premium. The non-production of covering letter which according to the sixth respondent is not on its record, does not clinch the issue in favour of the appellants. Taking an overall picture, we are unable to hold that the conclusion of the High Court in this regard is perverse or unsustainable. It seems to be fairly clear, as contended by the learned counsel for the appellant, that the amount paid by the Company was utilized towards payment of a part of interim compensation amount determined by the Land Acquisition Officer on 7.6.1996 and in the absence of this amount, the Nigam was not having sufficient cash balance to make such payment. We may even

go to the extent of inferring that in all probability, the Nigam would have advised or persuaded the Company to make advance payment towards lease amount as per the terms of MOU on a rough and ready basis, so that the said amount could be utilized by the Nigam for making payment on account of interim compensation. Therefore, it could have been within the contemplation of both the parties that the amount paid by the Company will go towards the discharge of the obligation of the Nigam to make payment towards interim compensation. Even then, it does not in any way support the appellants' stand that the compensation amount had not come out of public revenues. Once the amount paid towards advance lease premium, may be on a rough and ready basis, is credited to the account of the Nigam, obviously, it becomes the fund of the Nigam. Such fund, when utilized for the purpose of payment of compensation, wholly or in part, satisfies the requirements of the second proviso to Section 6(1) read with Explanation 2. The genesis of the fund is not the determinative factor, but its ownership in praesenti that matters.

Whether acquisition is for private purpose and vitated by colourable exercise of power We should now take up for consideration the next important facet of the appellants' argument turning on the question of public purpose and colourable exercise of power. The proposed acquisition, it is contended, is primarily and predominantly meant to cater to the interests of the respondent Company and another Company by name Rosy Blue of Antwerp which together entered into the Memorandum Of Understanding (MOU) with the State-owned Corporation. However, a twist was given to the acquisition as if it were for a public purpose, bypassing the requirements of Part VII of the Act. The entire exercise is an instance of colourable exercise of power and is, therefore, ultra vires the powers of the State Government. The money for the payment of advance compensation amount came from the source of respondent Company to whom the Government committed itself to allot the major chunk of land. This last point has already been dealt with by us and therefore the attention will be focused to the other factors that have been highlighted by the learned senior counsel for the appellants.

According to the learned senior counsel, the following facts and circumstances (apart from the source of payment of compensation), leads to a natural and logical inference that the acquisition, though styled as a public purpose acquisition, was in reality meant to subserve a private purpose.

It all started with the personal and written representation on behalf of AKI Ltd. (R-9/R-10) on 13.9.1995. The very next day, the Additional Secretary in the Industries Department conveyed to the Commissioner, Indore Division the assurance given by the Chief Minister that suitable land of an extent of 150-200 acres near Indore will be allotted for starting a new ultra modern unit for diamond polishing and processing. It was indicated in the letter that the Company proposed to lay foundation stone for its proposed unit on 1st November, 1995. The Additional Secretary, therefore, requested the Commissioner to ensure prompt and early administrative action so as to fulfill the assurance given by the Chief Minister to the Company's representatives. Within a week, i.e., on 22.9.1995, there was joint inspection by various State Government officials on the basis of which the appellants' land was selected despite the objection by the Zonal Pollution Officer. On 1.11.1995, a Memorandum Of Understanding was signed by the representatives of the Nigam on the one hand and M/s B. Arun Kumar Group of Companies and Rosy Blue of Antwerp, Belgium on the other. According to that MOU, 200- 260 acres will be acquired and will be made available among others to

the said two Companies who were willing to deposit lease premium in advance. The Nigam agreed to provide water and power facilities and assist the signatory Companies to obtain necessary sanctions. It also agreed to provide equity share capital if requested by the Company. On 22.1.1996, a letter was addressed by the General Manager, District Industries Centre requesting the Collector, Indore for acquisition of 73.304 hectares of private land apart from transferring the Government land of an extent of 44.816 hectares. According to the synopsis furnished by the appellants' counsel, this letter clearly shows that the acquisition was for a Company registered under the Companies Act. However, it may be clarified at this juncture that the letter dated 22.1.1996 which finds its place at Page No. 114 of the Paper-book in C.A.No. 7135 of 1999 is something different and it does not bear testimony to the fact alleged by the appellants. On 24.1.1996, the Collector requested the Commissioner's sanction for invoking Section 17(1). The Commissioner by his communication dated 29.1.1996, gave his approval to invoke emergency clause under Section 17(1) of the Act. The Collector issued the Notification under Section 4(1) for the acquisition of the appellants' land as well as other adjoining lands for the public purpose, to wit, 'for establishment of diamond park'. Section 17(1) was invoked in order to dispense with the enquiry under Section 5A. On 9.2.1996, a Notification under Section 6 was issued and the Collector was directed to take possession within stipulated time.

The above facts, according to the learned counsel for the appellants, would reveal that the machinery under the Land Acquisition Act was set in motion in record time to comply with the request of 9th/10th Respondent and the formalities were completed in post-haste solely with a view to enable the Company to go ahead with its proposed project.

The learned Advocate-General appearing for the State of Madhya Pradesh and also for the sixth respondent Corporation (Nigam) countered the above arguments by placing reliance inter alia on the findings of the High Court. He stressed on the policy of the State Government and the genuine effort made by the State Government and its agencies to develop the notified land to facilitate the establishment of diamond cutting and processing units with modern technology. He submitted that public purpose is writ large on the face of the acquisition and the Government is committed to pursue the project in public interest notwithstanding the disinterestedness of the respondent-Company owing to the delay that occurred.

On a deep consideration of the respective contentions in the light of the documents and events relied upon and the settled principles adverted to supra, we have no doubt in our mind that the acquisition was thought of with the earnest objective to achieve industrial growth of the State in public interest. Quite apart from the view taken by this Court that acquisition in order to enable a Company in private sector to set up an industry could promote public purpose, we have enough material in the instant case to conclude that the proposed acquisition will serve larger public purpose. It is fairly clear that the State's goal to bring into existence a huge industrial complex housing a good number of diamond cutting and polishing units has led to the present acquisition. Such industrial complex is compendiously termed as 'diamond park'. The State Government and its agencies including the Nigam acted within the framework of the 'Industrial Policy and Action Plan, 1994' in taking the decision to develop diamond park complex. Para 2.22 of the Industrial Policy specifically states that "the diamond park will be developed in the State for industries based on diamond cutting". Mineral based industries have been brought within the scope of 'thrust sector'. Export oriented units will be

specially encouraged, according to the policy. The policy further states that the Nigam will work as a nodal agency for the development of large and medium industries in the State and will play the role of a coordinator for the development of industrial infrastructure in growth sectors in partnership with the private sector and Industrialists' associations. The reference to Industrial Policy is found in the resolution passed at the meeting of Nigam on 23.11.1995 and the letter of the General Manager, District Industries Centre while forwarding the proposal for acquisition to the District Collector, Indore. The District Collector while seeking the approval of the Commissioner stressed that prestigious exporters from India as well as other foreign countries were likely to establish their units in the diamond park which would generate good deal of foreign exchange and create employment potential. The State Government by its communication dated 18.1.1996 accorded sanction in principle for acquiring the private land measuring 73 hectares in Rangwasa village 'for industrial purpose' in order to set up a diamond park. Thus, the considerations of industrial policy and development weighed prominently with all the concerned authorities while processing the proposals. It is clear from the stand taken by the Nigam in the counter-affidavit and the enquiry report of the Land Acquisition Collector that AKI Ltd., and Rosy Blue of Antwerp are not the only entrepreneurs who would get the land in the proposed diamond park area. In the report of the Land Acquisition Officer, it is specifically mentioned that the land is proposed to be allotted to 12 industrial units after being satisfied about their capacity and bona fides. Our attention has been drawn by the learned Advocate-General to the lay out plan in which 12 plots covering an area of 57 hectares are laid out. The remaining area is earmarked for green belt, housing, common facilities and other amenities. Even the MOU entered into between the Nigam and the two Companies do not give us a different picture. It is specifically stated therein that the Commerce and Industries Department will handover the land to Nigam for the development of diamond park and the Nigam in its turn will allot the land required for setting up the units for cutting and polishing diamonds on leasehold basis to the two Companies as well as other Companies. The site has been selected by a team of Government officials after visiting various places. The fact that AKI Ltd., also requested for allotment of suitable land near Indore and ultimately the land close to Indore was selected, does not necessarily mean that the official team was acting at the dictates of the said Company. Having regard to the strategic location and importance of Indore city, the choice of site near Indore cannot be said to be vitiated by any extraneous considerations. Entering into MOU with the two Companies and thereafter initiating requisite steps for the acquisition of the land does not, in our view, detract from the public purpose chara cter of acquisition. MOU, in ultimate analysis, is in the mutual interest of both the parties and was only directed towards the end of setting up of an industrial complex under the name of 'diamond park' which benefits the public at large and incidentally benefits the private entrepreneurs. One cannot view the planning process in the abstract and there should be a realistic approach. Industrial projects and industrial development is possible only when there is initiative, coordination and participation on the part of both the private entrepreneurs as well as the Governmental agencies. The active role and initiative shown by AKI Ltd., cannot give a different colour to the acquisition which otherwise promotes public purpose. The expression 'foreign collaboration' used in some of the letters which the learned Advocate-General states, is somewhat inappropriate, does not negative the existence of public purpose.

Much of support has been drawn by the learned counsel for the appellant from the letter dated 14.9.1995 addressed by the Additional Secretary, Industries Department, to the Commissioner,

Indore soon after the meeting of the representatives of AKI Ltd., with the Chief Minister and other senior officials. Much of the argument has been built up on it to characterize the acquisition as one for private purpose. We find no legal basis for such comment. The wording of the letter read in isolation may convey the impression that the Chief Minister assured allotment of 150 to 200 acres of land to AKI Ltd., for starting its modern diamond unit. But, it is fairly clear from the subsequent acts and correspondence including MOU that the land sought for was in connection with the proposal for a diamond park project in which not only AKI Ltd., but also other Companies or firms are to set up the diamond cutting and polishing industries with modern technology. Pursuant to the alleged assurance, no offer was made nor any steps taken to handover 150 acres of land to AKI Ltd. The said letter may be the starting point for action, but, as already noticed the authorities concerned proceeded to acquire the land for the public purpose within the framework of Land Acquisition Act. The contents of the letter, literally read, were not translated into action. But, it only provided a starting point to proceed with the acquisition for industrial purpose.

We are of the view that none of the factors pointed out by the learned counsel for the appellants make any dent on the orientation towards public purpose nor do they establish that the acquisition was resorted to by the Government to achieve oblique ends. The speed at which the proposal was pursued should be appreciated rather than condemning it, though the overzealousness on the part of authorities concerned to short-circuit the procedure has turned out to be counter- productive. True, the tardy progress of acquisition would have sent wrong signals to the prospective investors, as contended by the learned Advocate-General. However, due attention should have been given to the legal formalities such as holding of enquiry, specification of public purpose in clear terms and giving sufficient indication of State meeting the cost of acquisition wholly or in part. At the same time, we cannot read mala fides in between the lines; in fact, no personal malice or ulterior motives have been attributed to the Chief Minister or to any other official. The material placed before us do not lead to the necessary or even reasonable conclusion that the Government machinery identified itself with the private interests of the Company, forsaking public interest. Public purpose does not cease to be so merely because the acquisition facilitates the setting up of industry by a private enterprise and benefits it to that extent. Nor the existence or otherwise of public purpose be judged by the lead and initiative taken by the entrepreneurs desirous of setting up the industry and the measure of coordination between them and various state agencies. The fact that despite the unwillingness expressed by AKI Ltd., to go ahead with the project, the Government is still interested in acquisition is yet another pointer that the acquisition was motivated by public purpose.

Whether notifications should be struck down on the ground of vagueness of public purpose The vagueness of notified public purpose is the next ground of attack against the notifications issued under Sections 4(1) and 6. According to the learned counsel for the appellant, the expression "establishment of diamond park" is vague and unintelligible and therefore deprives the landholders and the general public of the valuable right to object to the acquisition on relevant grounds. It is further contended that the elaboration of the public purpose in the notice of enquiry issued under Section 5-A by the Land Acquisition Officer does not cure the vital defect in the notification under Section 4(1) which is an essential prerequisite for all further action under the Act. Hence it is contended that the notification under Section 4 together with the subsequent proceedings become null and void. The sheet-anchor of this argument rests on the decision of this Court in Madhya

Pradesh Housing Board Vs. Md. Shafi [(1992) 2 SCC 168]. There, the public purpose was described as 'residential' without even giving definite indication of the exact location of the lands sought to be acquired. What is more, in the declaration under Section 6(1), the public purpose was stated differently as 'housing scheme of Housing Board'. This Court, inter alia, held that the impugned notification was vitiated on account of being vague. The Court observed:

> "Apart from the defect in the impugned notifiation, as noticed above, we find that even the "public purpose"

which has been mentioned in the schedule to the notification as 'residential' is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as invalid in law. There is no indication as to what type of residential accommodation was proposed or for whom or any other details. The State cannot acquire the land of a citizen for building some residence for another, unless the same is in 'public interest' or for the benefit of the 'public' or an identifiable section thereof. In the absence of the details about the alleged 'public purpose' for which the land was sought to be acquired, no one could comprehend as to why the land was being acquired and therefore was prevented from taking any further steps in the matter."

The Court relied on the observation in Munshi Singh Vs. Union of India [(1973) 1 SCR Page 973] to the effect that the public purpose "needs to be particularized" to satisfy the requirements of law. We do not think that the ratio of the decision in M.P. Housing Board's case would come to the rescue o the appellants. Though the State Government could have discreetly avoided to use sophisticated industrial jargon, we do not think that the specified public purpose is so vague and indefinite that the public will not be in a position to understand its nature and purpose. That such terminology has gained currency is evident from the fact that the same expression was used in the Industrial Policy document. It may not be out of place to mention that in the recent times, the terminology such as Industrial Park, Information Technology Park is widely in circulation. Moreover, against the column 'authorised officer under Section 4(2)' (close to the column 'public purpose'), the designation of Manager, District Industries Centre, Indore is specified. This is a pointer to the fact that the land was being acquired for industrial purpose. We are therefore of the view that in the instant case, the alleged vagueness is not of such a degree as to defy sense and understanding.

In Aflatoon Vs. Lt. Governor of Delhi [(1975) 4 SCC Page 285] the public purpose mentioned in the notification under Section 4 was "planned development of Delhi". The challenge on the ground of vagueness of the notification was repelled on several grounds. The approach of the Court and the crucial consideration to be kept in view in dealing with this question was highlighted by Mathew, J. speaking for the Constitution Bench in the following words:

> "...According to the Section (Section 4), therefore, it is only necessary to state in the notification that the land is needed for a public purpose. The wording of Section 5A would make it further clear that all that is necessary to be specified in a notification under Section 4 is that the land is needed for a public purpose. One reason for specification of the particular public purpose in the notification is to enable the person whose land is sought to be acquired to file objection under Section 5A. Unless

> a person is told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition under Section 5A. .....
>
> We think that the question whether the purpose specified in a notification under Section 4 is sufficient to enable an objection to be filed under Section 5A would depend upon the facts and circumstances of each case."

Absence of prejudice was highlighted in Paragraph 10 thus:

> "That apart, the appellants did not contend before the High Court that as the particulars of the public purpose were not specified in the notification issued under Section 4, they were prejudiced in that they could not effectively exercise their right under Section 5A."

On the facts of the case, it is not possible to draw the conclusion that the appellants have suffered any prejudice or handicap on account of the alleged vagueness in the description of public purpose. First of all, the appellants did not, in the pleadings before the High Court, point out as to how the alleged ambiguity or vagueness had resulted in prejudice in the sense that they could not effectively object to the acquisition. On the other hand, the appellants filed detailed objections before the Land Acquisition Officer covering each and every aspect. The objections and representations filed from time to time would unequivocally indicate that they were fully aware of the exact purpose of acquisition. Raising the bogey of vagueness in public purpose is evidently a result of after-thought. Moreover, by virtue of what is stated in the notices issued by the Land Acquisition Officer under Section 5A of the Act, no one could possibly have any doubt about the exact purpose of acquisition. True, it is not open to the Land Acquisition Officer to alter or expand the scope of public purpose as it is within the exclusive domain of the Government. But the Land Acquisition Officer by elaborating and making explicit what is really implicit in the notification under Section 4(1), had only dispelled the possible doubts in this regard so that no one will be handicapped in filing objections. It is in that light the step taken by the Land Acquisition Officer has to be viewed. We cannot countenance the contention that in doing so, the Land Acquisition Officer outstepped his jurisdiction.

When no prejudice has been demonstrated nor could be reasonably inferred, it would be unjust and inappropriate to strike down the notification under Section 4(1) on the basis of a nebulous plea, in exercise of writ jurisdiction under Article 226. Even assuming that there is some ambiguity in particularizing the public purpose and the possibility of doubt cannot be ruled out, the Constitutional Courts in exercise of jurisdiction under Article 226 or 136 should not, as a matter of course, deal a lethal blow to the entire proceedings based on the theoretical or hypothetical grievance of the petitioner. It would be sound exercise of discretion to intervene when a real and substantial grievance is made out, the non redressal of which would cause prejudice and injustice to the aggrieved party. Vagueness of the public purpose, especially, in a matter like this where it is possible to take two views, is not something which affects the jurisdiction and it would therefore be proper to bear in mind the considerations of prejudice and injustice.

Objection on the ground of ecological and security considerations The last contention is that the proposed diamond park complex will be objectionable from the point of view of ecology and national security. Reliance is placed on some of the guidelines spelt out in the "Policy Statement for Abatement of Pollution" issued by Government of India, Ministry of Environment and Forests in the year 1992. At the outset, we must take note of the undisputed fact that the diamond cutting and polishing equipment and the operations connected therewith does not give rise to any pollution caused by emission of fumes, noise or discharge of effluents. The problem of air, water or soil pollution excepting to a minimal extent, caused on account of inhabitation and transportation, will not arise. The appellants, however, relied on the guidelines in order to contend that in locating the industries, a distance of 25 KMs from ecologically and/or otherwise sensitive areas should be maintained. It is submitted that the MHOW-a Defence establishment is within 10 KMs distance and the Centre for Advanced Technology (Department of Atomic Energy) is 3 kilo meters from the proposed site of diamond park. However, it is on record that the Army Headquarters expressed no objection from military security point of view for setting up the diamond park. So also, the Centre for the Advanced Technology in its letter addressed to the Managing Director of the Nigam made it clear that the establishment of diamond park would not cause any security problems to the said Centre. The Union Minister of State in the Ministry of Defence also stated on the floor of the Rajya Sabha on 11.9.1996 that there were no direct national security implications involved in the setting up of the proposed project. It is also pertinent to note that in the guidelines themselves, the need to strike a balance between economic and environmental considerations has been stressed. One of the guidelines is that no prime agricultural lands shall be converted into industrial site. But, there is no material on record to show that the lands in question are prime agricultural lands which were being utilized for growing crops. The guidelines enunciated in the policy statement have to be viewed realistically. The topography of the area and the development around the area are some of the factors that could be legitimately taken into account. On the basis of the materials placed before the Court it is not possible to hold that the proposed diamond park project will be detrimental to public health, safety or security so as to override the public interest that is served by setting up export-oriented industries. We have, therefore, no hesitation in rejecting this contention. Objection regarding acquisition of excess land Before parting with the case, we may advert to one more contention advanced by the learned counsel for the appellant which is really a facet of the argument on the question of public purpose. It is contended that such a vast extent of land is in fact not required by any reasonable standards and there was total non application of mind as regards the extent of the land required. In reply to this, the learned Advocate-General has drawn our attention to the Lay Out Plan and pointed out that it was only on the basis of an assessment of the requirements, the extent of land to be acquired has been arrived at. Excepting oral assertions and bald averments, there is no material before us to reach the conclusion that the requirements were not properly assessed by the concerned authorities. It is primarily within the domain of State Government to decide how much extent of land has to be acquired keeping in view the present and future needs. Though, we are not inclined to find fault with the notification on this ground, we would only like to observe that it is desirable that the State Government makes a fresh assessment in the light of the latest situation and exclude any part of the land which may be found to be in excess.

For the reasons aforesaid, the appeals are dismissed with no order as to costs.