State Of Tamil Nadu & Ors.Etc vs L.Krishn N & Ors.Etc on 1 November, 1995

Equivalent citations: 1996 AIR 497, 1996 SCC (1) 250, AIR 1996 SUPREME COURT 497, 1996 (1) SCC 250, 1995 AIR SCW 4390, (1996) 1 LANDLR 168, (1996) 1 RENTLR 82, (1996) 1 ICC 140, (1996) LACC 105, (1995) 8 JT 1 (SC), (1996) 2 SCJ 178, (1995) 4 CURCC 61, (1996) 1 LJR 58

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Bench: B.P. Jeevan Reddy, K. Ramaswamy, B.L Hansaria

PETITIONER:
STATE OF TAMIL NADU & ORS.ETC.

Vs.

RESPONDENT:
L.KRISHN N & ORS.ETC.

DATE OF JUDGMENT01/11/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 497 1996 SCC (1) 250
JT 1995 (8) 1 1995 SCALE (6)221

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T B.P. JEEVAN REDDY.J. CIVIL APPEAL NOS.1865-66/1868-70 OF 1992 These appeals are preferred by the State of Tamil Nadu, Tamil Nadu Housing Board and others against the judgment of the Madras High Court allowing a batch of writ petitions and quashing three

notifications issued under Section 4(1) of the Land Acquisition Act,1894. The three notifications concerned herein are the notifications dated May 8, 1975, August 29,1975 and February 19,1975. The writ petitions have been allowed relying mainly upon the earlier decision of the Court in State of Tamil Nadu V. A.Mohammed Yousef and Ors. (1992 (2) M.L.J.149) [which has since been affirmed by this Court in State of Tamil Nadu & Anr.v.A.Mohammed Yousef & Ors. (1991 (4) S.C.C. 224)] and the decision of this Court in Munshi Singh v.Union of India (1973 (1) S.C.R.973).

The first and the main ground assigned by the High Court for quashing the said notifications is that the public purpose stated therein is vague and that on the date of issuance of the said notifications, there was not existing any final and effective scheme prepared under the provisions of the Tamil Nadu State Housing Board Act. Two other grounds assigned by the High Court in support of its decision are

(i) that there was an undue delay in passing the awards after the issuance of the declarations under Section 6 and

(ii) non-compliance with clauses (b) and (c) of Rule 3 of the Land Acquisition Rules framed by the State Government in the course of enquiry under Section 5-A. The public purpose stated in the three notification is "for the implementation of housing schemes to meet the demands made by various sectors of the population under `Kalaignar Karunanidhi Nagar Further Extension Scheme'", "for the creation of a new neighbourhood known as Kalaignar Karunanidhi Nagar Part II Schemes" and "for increasing housing accommodation for the development of South Madras neighbourhood " respectively. Enquiries under Section 5-A were held and on the basis of reports submitted in that behalf, declarations under Section 6 were made sometime in the year 1978. Awards were passed in the year 1983. The writ petitions from which these appeals arise were filed in the year 1982 and in 1983 - one of them even later.

Sri Harish Salve, learned counsel for the appellants, disputed the correctness of the judgment under appeal on the following grounds: the impugned judgment of the High Court is contrary to more than one Constitution Bench judgment of this Court. The principle of the decision in Mohammed Yousef or, for that matter, of Munshi Singh has no application to the facts herein; it is not necessary that there should be a final and effective scheme prepared under the Tamil Nadu State Housing Board Act [Housing Board Act] before lands are acquired for the purpose of the Housing Board; lands are acquired by the Government even where there is no final and effective housing scheme on the date of the notification; in these cases, the schemes were indeed initiated prior to the issuance of Section 4 notifications and were finalised after the issuance of the said notification. The public purpose started in the notifications is not vague. Learned counsel further submitted that the respondents-writ petitioners cannot be allowed to raise the said grounds inasmuch as they neither filed objections in the enquiry held under Section 5-A, nor did they raise these grounds at any time before the issuance of declaration under Section 6. They did not make this grievance even after the issuance of Section 6 declaration for a number of years. Only when the awards were about to be passed (and in some cases after the passing of the awards) were these writ petitions filed. On the ground of laches and acquiscence along, the writ petitions ought to have been dismissed. So far as the post- declaration delay assigned by the High Court as one of the grounds for its decision is

concerned, the learned counsel submitted that the said delay, if any, is not fatal in view of the counter-vailing/beneficial provision contained in Section 48-A, added by the Madras Legislature in the Land Acquistion Act. Laches are pleaded with respect to this ground as well. With respect to the other ground given by the High Court, viz., non-compliance with clauses (b) and

(c) of Rule 3 of the Tamil Nadu Land Acquisition Rules, Sri Salve submitted that the High Court ought not to have permitted the writ petitioners to raise this ground since they did not even file objections in the enquiry under Section 5-A nor did they complain of this aspect at the proper time. Only when the awards were about to be passed or after the passing of the awards, as the case may be, the petitioners have come forwards with the present writ petitions.

Sri Ashok Sen, learned counsel for the respondents-writ petitioners, supported the reasoning and conclusions arrived at by the High Court. He submitted that unless a scheme is prepared under and in accordance with the Housing Board Act, no notification under Section 4 of the Land Acquisition Act can be issued. Unless the public purpose is spelt out clearly, the persons interested would be handicapped in making an effective representation in the enquiry under Section 5-A. Unless they know for what particular purpose their land is sought to be acquired, giving them an opportunity to file objections is an empty formality. A final effective housing scheme prepared and published under the Housing Board Act, containing as it does the full particulars of development, alone would satisfy the requirement of particularisation of the public purpose. Where, therefore, the land is acquired for the purpose of the Housing Board, a final scheme prepared under the Housing Board Act is a condition precedent. It is for this reason that this Court has held in Mohammed Yousef that such a scheme is a precondition for a notification under Section 4 of the Land Acquisition Act.

Sri Siva Subramaniam, learned counsel for some of the respondents-writ petitioners, supported the contentions of Sri Sen. He submitted further that even apart from the provisions of the Housing Board Act, there ought to be a scheme before the issuance of Section 4 notification not only to satisfy the requirement of public purpose but also to afford the persons interested a reasonable and effective opportunity to object.

The first question that arises in these appeals is whether a final and effective scheme prepared and published under the provisions of the Housing Board Act is a pre- condition to the issuance of notification under Section 4. This question has to be answered with reference to the provisions of the Land Acquisition Act as well as the Housing Board Act.

None of the three notifications, it may be noted, state that the land is being acquired for the purpose of the Tamil Nadu Housing Board. The fact, however, remains - and it is admitted before us - that the said lands were being acquired for the purpose of the Housing Board only.

Section 4 of the Land Acquisition Act does not state expressly or by necessary intendment that before a notification is issued/published thereunder proposing to acquire land for the purpose of a body like the Tamil Nadu Housing Board, a duly published final scheme prepared in accordance with the relevant Act should be in force. The respondents-writ petitioners, however, seek to deduce such a requirement from the provisions of the Tamil Nadu Housing Board Act.

The Housing Board Act was enacted by the Tamil Nadu legislature "to provide for the execution of housing and improvement schemes, for the establishment of a State Housing Board and for certain other matters". Section 2 defines certain expressions occurring in the Act. The expression "housing or improvement scheme" is defined in clause (9) to mean a scheme framed under the Act and includes any one of the types of scheme referred to in Section 40. Chapter-II (Sections 3 to 11) provides for the constitution of the Board, appointment of its members and their disqualifications. Chapter-III (Sections 12 to 15) provides for transfer of the assets and liabilities of the City Improvement Trust to the Housing Board. Section 12 dissolves the City Improvement Trust with effect from the date of the said enactment and vests all assets and liabilities thereof in the Board. Chapter-IV (Section 16 to

22) deals with officers and members of the staff of the Board. Chapter-V (Sections 23 to 27) deals with the conduct of business of the Board and its committees while Chapter-VI (Sections 28 to 34) deals with powers of the Board and Chairman to incur expenditure on scheme and enter into contracts. Chapter-VII (Sections 35 to 69-A), which provides for housing or improvement schemes, is relevant for our purpose.

Sub-section (1) of Section 35 provides that "subject to the provisions of this Act, the Board may, from time to time, incur expenditure and undertake works for the framing and execution of such housing or improvement schemes as it may consider necessary." Sub-section (2) is significant for our purposes. It says,"(T) he Government may, on such terms and conditions as they may think fit to impose, transfer to the Board the execution of any housing or improvement scheme not provided for by this Act, and the Board shall thereupon undertake the execution of such scheme as if it had been provided for by this Act." Sub-section (3) empowers the Board to take over for execution any housing or improvement scheme undertaken by a local authority on such terms and conditions as may be agreed upon. The Board shall execute such schemes as if it is provided by the Housing Board Act. Section 36 empowers the Government to transfer to the Housing Board "any land in such area belonging to or vested in them or acquired under the provisions of the Tamil Nadu Slum Improvement (Acquisition of Land) Act, 1954", on such terms as they may think fit to impose, for the purpose of clearance or improvement of any slum area. The Government is also empowered to direct the Board to undertake the clearance or improvement of that area and execute such housing or improvement scheme under the Act as the Government may specify. Thereupon, the Board is obligated to undertake the said scheme for execution as if it had been provided for by the Housing Board Act. We shall refer to the significance of these provisions after we refer to some more provisions in this chapter.

Section 37 says that "a housing or improvement scheme may be framed by the Board on its own motion or at the instance of the Government or a local authority". Section 38 empowers the Board either to execute or refuse to execute or refuse to execute any scheme sought to be entrusted to it by any local authority. Section 39 specifies the matters which must be provided for in a housing or improvement scheme. In short, all the particulars of the proposed scheme have to be stated therein. Section 40 specifies the several types of housing or improvement schemes. There are as many as eight types. Sections 41 to 48 deal separately with each type of scheme. We need not refer to the contents of these sections for the purpose of these appeals. Sections 49 to 56 deal with the procedure

to be followed by the Board in preparing a housing or improvement scheme. Section 49(1) says that where any housing or improvement scheme has been framed, the Board shall prepare a notice to that effect and specify (a) the boundaries of the area comprising the scheme and (b) the place or place at which particulars of the scheme, a map of the area and details of the land which it is proposed to acquire may be seen at reasonable hours. Sub-section (2) provides that the notice contemplated by sub-section (1) shall be published in the official gazette and two leading daily newspapers. A copy of the notice has also got to be sent to the local authority concerned. Sub-section (3) empowers the Chairman to deliver copies of all documents referred to in the notice to any applicant on payment of the appropriate fee. Section 50 days that the local authority to whom the notice under Section 49(2) (b) is sent shall forward any representation received by it to the Board within sixty days of the said notice. Section 51 deals with the notice regarding proposal to recover betterment fee, which need not be noticed by us. Section 52 requires a local authority to furnish, on a request being made by the Chairman of the Board, a copy of, or an extract from, the assessment list of the local authority. Section 53 provides that after considering the objections and representations, if any, received pursuant to the notice published under Section 49(2), 50 and 51(4) and after hearing such objectors, as may desire to be heard, "the Board may either abandon or modify or sanction the scheme, or apply to the Government for sanction with such modifications, if any, as the Board may consider necessary if the cost of the scheme exceeds ten lakhs of rupees". Sub-section (2) then says that the Government sanction the scheme so forwarded either with or without modification or may refuse to sanction or may return the same to the Board for reconsideration. Sub- section (3) of Section 49. Section 54(1) provides for publication of sanctioned housing schemes. Sub-section (2) says that the publication of the notification or notice under sub-section (1) in respect of any scheme has been duly framed and sanctioned. Sub-section (3) provides for an appeal against such scheme to the Government by the person aggrieved therewith to be preferred within thirty days of such publications Sub-section (4) says that the scheme notified under Section 54(1) shall come into force and shall have effect (a) where no appeal is preferred under sub- section (3) on and from the expiry of the thirty days referred to in that sub-section (3) on and from the expiry of the thirty days referred to in that sub section and (b) where such appeal is preferred on and from the date of the decision of the Government on such appeal. Section 55 says that as soon as may be after a hosing or improvement scheme has come into force as provided in Section 54, the Board shall proceed to execute the same. Section 56 provides for alteration or cancellation of any scheme, even after it has come into force as provided in Section 54 but before it has been carried into execution. Clause (b) of Section 56 (which has been omitted by the Amendment Act 5 of 1992) provided that if any alteration in the scheme to be effected under Section 56 involves acquisition of any land, the procedure prescribed in the aforesaid sections in this "Chapter shall be followed as if the alteration were a separate scheme. Section 57 provides for transfer of any building, land or street situated within the limits of a local authority and vesting in it to the Board for execution of the Scheme. Section 58 provides for a similar transfer of a private street or square and the procedure to be followed in that behalf. The remaining sections in this Chapter deal with the powers of the Board in the matter of executing the scheme prepared under the chapter.

Chapter-VIII provides for acquisition and disposal of lands required by the Board. Section 70 (which has since been substituted by Amendment Act 5 of 1992] read as follows before substitution: "70.

Any land or any interest therein required by the Board for any of the purposes of this Act may be acquired under the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894)." It is not necessary to refer to the remainign provisions of the Act.

Coming back to the provisions of Chapter-VII, it may be noticed that the said chapter provides for the types of the housing or improvement schemes and the procedure following which housing or improvement schemes have to be finalised and executed. But Section 35 and 36 make it clear that the duty of the Housing Board does not begin and end with executing the housing Board is under an obligation to carry out certain other schemes also as are provided in these sections. Sub-section (2) of Section 35 states that the Government may, on such terms and conditions as they may think fit to impose, transfer to the Board the execution of any housing or improvement scheme not provided for by the Act. On such transfer, the Board is under an obligation to undertake the execution of such scheme as if such scheme has been provided for by the Housing Board Act. Sub-section (3) of section 35 similarly provides that the Board may also undertake to execute any housing or improvement scheme undertaken by a local authority on terms and condition to be agreed upon between it and such local authority. If the Board agrees to execute the said scheme of the Local authority, it shall execute that scheme as if it has been provided for by the Housing Board Act. Section 36 then provides that if the Government thinks it expedient or necessary for the purpose of clearance or improvement of any slum, it can transfer any land in such are belonging to it or vested in it or acquired under the provisions of the Tamil Nadu Slum Improvement (Acquisition of Land) Act, 1954 to the Board on such terms and conditions as the Government may think fit to impose and direct the Board to undertake the clearance or improvement of that area and to frame and execute such housing or improvement scheme under this Act as the 36 further says that on such transfer and direction by the Government the Board shall execute the said scheme as if it had been provide for by this Act.

These provisions make it abundantly clear that the duty of the Housing Board is not merely the execution of the housing or improvement schemes prepared and published by it under the Act but extends to executing other schemes as well as are made over to it or agreed to be undertaken by it. Now when Section 35(2) speaks of transfer to the Board the execution of any housing or improvement scheme not provided for by this Act, it certainly cannot mean a scheme prepared in accordance with the provisions of the Housing Board Act. Moreover, while transferring the scheme to the Board, the Government is empowered to impose such conditions as they may think fit to impose. Such terms and conditions are not specified in the Act but lie within the discretion of the Government. Similarly, when sub-section (3) of Section 35 speaks of a scheme undertaken by a local authority to be made over to the Housing Board for execution, it cannot again mean a Housing or improvement scheme not prepared in accordance with the provisions of the Housing Board Act. Here again, it taking over the scheme by the Housing Board is subject to such terms and conditions as may be agreed upon by both. Section 36 indeed discloses that what is entrusted to the Housing Board is the job of clearance or improvement of any sum area. The Government while directing the Board to undertake the clearance or improvement of a particular area can also direct the Board to frame and execute "such housing or improvement scheme under this Act as the Government may specify " and the Board is obliged to execute such scheme as if such scheme is prepared by the Act.

In such circumstances, it would not be right to contend that unless a final and effective scheme prepared in accordance with the provisions of Chapter VII of the Housing Board Act is in existence, the Government cannot issue a notification under Section 4 of the Land Acquisition Act for acquiring the land required for execution of the schemes by the Housing Board. To repeat, the Housing Board is obliged to execute not only the housing or improvement schemes prepared under the said chapter but also certain other schemes referred to in Sections 35 and 36. For example, the Government may conceive of a particular scheme and ask the Housing Board to execute on such terms and conditions as the Government may specify. In such a situation, there is no question of preparing a housing or improvement scheme by the Housing Board in accordance with the provisions of the Housing Board over again. So far as the scheme framed by the Government is concerned, there is no enactment governing it. it can, therefore, be a scheme as ordinarily understood. Similar would be the case where the scheme undertaken by a local authority is made over to the Housing Board by mutual agreement.

In this connection, it is significant to notice that the Housing Board Act speaks of the acquisition of land both as a part of a housing or improvement scheme framed by it under Chapter-VII and also independent of such a scheme. We may elaborate. Clause (a) of Section 39 (unamended) described one of the particulars to be stated in the draft scheme. Clause (a) of Section 39 read as follows:

> "39. Notwithstanding anything contained in any other law for the time being in force, a housing or improvement scheme may provide for all or any of the following matters, namely :-
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> (a) the acquisition by purchase, exchange, or otherwise of any property necessary for or affected by the execution of the scheme." (Emphasis added) Similarly, Section 49(1) b [unamended], which provides for publication of a final scheme, read:
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> "49(1). When any housing or improvement scheme has been framed, the Board shall prepare a notice to that effect and specify--
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> (a) the boundaries of the area comprised in the scheme; and
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> (b) the place or places at which particulars of the scheme, a map of the area, and details of the land which it is proposed to acquire and of the land in regard to which it is proposed to recover a betterment fee, may be seen at reasonable hours." (Emphasis added) Reference may also be made in this connection to clause
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> (b) of the proviso to Section 56. Section 56. as already noticed, provides for alteration or cancellation of a housing scheme even after it is sanctioned by the Board or the Government but before it is carried into execution. This power is, however, conditioned by matters provided in the proviso. Proviso (b), before it was deleted by the aforesaid Amendment Act, read thus:
>
> "Provided that--

> (b) if any alteration involves the acquisition, otherwise than by agreement, of any land not previously proposed to be acquired in the original scheme, the procedure prescribed in the foregoing sections of the Chapter shall, so far as it may be applicable, be followed as if the alteration were a separate scheme."

(Exphasis added) These are the provisions which speak of acquisition of land as a part and parcel of a housing or improvement scheme framed under Chapter-VII. We may now refer to the provision which speaks of acquisition of land independent of a scheme framed under Chapter-VII.

Chapter-VIII of the Act deals with acquisition and disposal of land. Section 70, before it was substituted by the Amendment Act 5 of 1992, read thus:

> "70. Any land or any interest therein required by the Board for any of the purpose of this Act may be acquired under the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894)."

It is significant to notice the language of this section. This section enables the Government to acquire any land required by the Board "for any of the purpose of this Act"- and purposes of the Act are not confined to execution of the schemes framed by the Board under Section 37 to 56 (in Chapter-VII) but extend to the execution of the schemes transferred to it, or agreed to be undertaken by the Board, which schemes have to be executed by the Board under the Act. It is open to the Government, for example, to acquire a land and transfer it to the Housing Board for executing the scheme devised by the Government and as directed by it. Similarly, any land required for executing a scheme devised by a local authority and the execution of which has been undertaken by the Board is also required for the purposes of the Act and can be acquired. In other words, Section 70 is an affirmation, a recognition, of the power of the Government to acquire any land required by the Housing Board for any of the purposes of the Act. It takes in acquisition of land required for the execution of a housing or improvement scheme devised by the Housing or improvement scheme devised by the Housing Board under Sections 37 to 56 of the Act as also acquisition of land for other purposes of the Act. As a matter of fact, we are not sure whether it would be right to curtail or restrict the plenary power under Section 4 with reference to the provisions of the Housing Board Act merely because the land to be acquired is to be made over to Housing Board for the purpose of the Act. As mentioned hereinabove, the notifications themselves do not say that the land is being acquired for the purpose of a housing or improvement scheme framed by the Housing Board under the profusions of the Act, though it is true, it was undoubtedly meant for the Housing Board. Once it is held that the Housing Board can execute schemes other than those framed by it under Sections 37 to 56, as explained above, there appears to be no warrant for qualifying the plenary power under Section 4 of the Land Acquisition Act with reference to the said provisions of the Housing Board Act. As we shall point out, earlier decisions of this Court have taken precisely this view. But before we refer to them, it would be appropriate to deal with the decision of a two- Judge Bench of this Court in State of Tamil Nadu & Anr. v. A.Mohammed Yousef and Ors. (1991 (4) S.C.C.224), affirming, on the decision of the Madras High Court, upon which strong reliance is placed by the respondents. In this decision, it has been held that a proceeding under Land Acquisition Act read with Section 70 of the Housing Board Act can be commenced only after the framing of the scheme for which the land is

required, but not before.

We may mention, at the outset, that these appeals have been referred to a three-Judge Bench by a Bench of two learned Judges because they doubted the correctness of the decision in Mohammed Yousef, vide Order dated February 16, 1993.

The facts in Mohammed Yousef are these: the notification under Section 4 of the Land Acquisition Act was issued stating the public purpose as construction of houses by the Tamil Nadu Housing Board. Admittedly not even a draft scheme was framed by the Housing Board by the date of the said notification. On the contrary, the contention of the State was that only after the acquisition proceedings are completed and possession of the land taken, would they frame a scheme. Alternately, it was contended by the State that framing of a scheme is not a Pre-condition for issuance of a valid notification under Section 4 of the Land Acquisition Act proposing to acquire the land for construction of houses by the Housing Board. The High Court had struck down the notification on the ground that the public purpose mentioned therein was too vague in the absence of details relating to the scheme for which the acquisition was sought to be made. The High Court opined that in the absence of such a scheme with necessary particulars the land-owners cannot effectively avail of the opportunity given by Section 5-A. In this Court, however, the main contention of the respondents-land-owners was that the framing of a scheme by the Housing Board under the provisions of the Housing Board Act is a pre-condition to a valid notification under Section 4 where the land is proposed to be acquired for the purpose of the Housing Board. Inview of the said contention, this Court examined the scheme of the Act and held that inasmuch as acquisition of the land is a part and parcel of the execution of a scheme framed by the Board under the Act, the acquisition must follow the scheme and cannot precede it. The Bench further observed that unless such a scheme with requisite particulars is duly published, it may not be possible for the land-owners to object to the proposed acquisition on the ground that the land is not suitable for the scheme at all and/or that it does not serve the stated public purpose. The Bench observed that the power of the Board to frame a scheme is regulated by the provisions of the Act which, inter alia, provide a full opportunity to the affected persons to object to the scheme. Even after the final publication of the scheme and after its coming into force, it was pointed out, the scheme can yet be altered or cancelled as provided under Section 56 of the Act. For all these reasons, the Bench held that "a proceeding under Land Acquisition Act read with Section 70 of the Madras Housing Board Act can be commenced only after framing the scheme for which the land is required".

Unfortunately, the provisions in sub-sections (2) and (3) of Section 35 and Section 36 were not brought to the notice of the Bench nor were the earlier Constitution Bench decisions of this Court brought to its notice, to which decisions we may now turn. But one more relevant aspect before we refer to them.

After, and in the light of, the impugned judgment, the Tamil Nadu Legislature has amended the Housing Board Act with retrospective effect with a view to remove the basis of the said judgment and providing expressly that existence of a scheme framed by the Housing Board is not a pre-condition for acquiring land for the purpose of the Board. The validity of the said Amendment Act has also been questioned in the connected matters but the necessity to go into that question will

arise only if we agree with the reasoning and conclusions in the decision under appeal. Indeed, Sri Salve's argument was that the decision of the High Court is unsustainable even without reference to the said Amendment Act and it is on that basis that he made his submissions.

In Arnold Rodricks & Anr. v. State of Maharashtra & Ors. (1966 (3) S.C.R.885), the Constitution Bench dealt with the question whether the statement in the notification under Section 4 that the land was required for "development and utilisation of the said land as an industrial and residential areas" cannot be said to be a public purpose within the meaning of Section 4 of the Land Acquisition Act. The Court held, relying upon the decisions of this Court in Babu Barkya Thakur v. State of Bombay (1961 (1) S.C.R.128 at

137) and Pandit Jhandu Lal V. The State of Punjab (1961 (2) S.C.R.459) - as well as the statement in the counter- affidavit filed on behalf of the State Government- that the purpose stated in the notification is indeed a public purpose. The Constitution Bench pointed out that in Babu Barkya Thakur, this Court had relied upon the decision in State of Bombay v. Bhanji Munji & Anr. (1955 (1) S.C.R.777) to the effect that "providing housing accommodation to the homeless is a public purpose (and that) where a larger section of the community is concerned, its welfare is a matter of public concern". The counter-affidavit filed on behalf of the Government explained that the pressure of housing in Bombay is acute and that there was any amount of need for fresh housing. The Court (majority) observed, "in our view, the welfare of a large proportion of persons living in Bombay is a matter of Public concern and the notifications served to enhance the welfare of this section of the community and this is public purpose".

Another contention urged for the petitioners was that the Government had not prepared any scheme before issuing the notification under Section 4. This argument was also negatived in the following words:

> "This is true that the Government has not uptil now prepared any scheme for the utilisation of the developed sites. But the notification itself shows that the sites would be used as residential and industrial sites. There is no law that requires a scheme to be prepared before issuing a notification under s.4 or s.6 of the Act. We have, however, no doubt that the Government will, before disposing of the sites, have a scheme for their disposal."

We have held hereinbefore that merely because the Housing Board Act contemplates acquisition of land as part of a housing or improvement scheme, it does not follow that no land needed for the purpose of the Housing Board Act can be acquired until and unless a scheme is prepared and finalised by the Board and becomes effective under the provisions contained in Chapter-VII.

In Aflatoon & Ors. v.Lt. Governor of Delhi & Ors. (1975 (1) S.C.R.802), another Constitution dealt with a similar contention, viz., that before publishing the notification under Section 4, the Government had not declared any area in Delhi as a development area under Section 12(1) of the Delhi Development Act nor was there a Master Plan drawn up in accordance with Section 7 of that Act. The notification under Section 4 was attacked on that basis. It was argued that under Section

12(3) of the Delhi Development Act, no development of land can be undertaken or carried out except as provided in that sub-section. This argument was negatived by the Constitution Bench holding that :

> "The planned development of Delhi had been decided upon by the Government before 1959, viz., even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after that Act came into force, but there was no inhibition in acquiring land for planned development of Delhi under the Act before the Master Plan was ready (see the decision in Patna Improvement Trust V.Smt.Lakshmi Devi and Ors. (1963 Suppl. (2) S.C.R.812)). In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property:
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> acquisition generally precedes development. For planned development in an area other than a development area it is only necessary to obtain the sanction or approval of the local authority as provided in s.12(3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority."

It is significant to notice that Section 12 of the Delhi Development Act, 1957 provided for declaration of any area as development area by the Central Government and it further provided that except as otherwise provided by the said Act, the Delhi Development Authority shall not undertake or carry out any development of land in any area which is not a development area. Sub-section (3) of Section 12, however, provided that after the commencement of the said Act, no development of land shall be undertaken or carried out in any area by anyone unless (i) where that area is a development area,permission for such development has been obtained in writing from the Authority in accordance with the provisions of the Act and (ii) where the area is an area other than a development area, approval of the local authority or other concerned authority is obtained accordance with the provisions of the Act and (ii) where the area is an area other than a development area, approval of the local authority or other concerned authority is obtained according to law. Section 15 of the said Act provided for acquisition of any land required for the purpose of development under the Act.

In our opinion, the observations quoted and emphasised hereinabove, and the board similarly between the provisions of the Delhi Act and the Tamil Nadu Housing Board Act, establish that the acquisition of the land is not dependent upon the preparation and approval of a scheme under Sections 37 to 56 and that the Government's power of acquisition extends to other purposes of the Board and the Housing Board Act referred to in Sections 35 and 36. Moreover, under Tamil Nadu Housing Board too, there is no inhibition against acquisition of land for the purpose of the Board except in accordance with and as a part of the scheme.

For all the above reasons, we find it difficult to read the holding in Mohammed Yousef as saying that in no event can the land be acquired for the purpose of the Act/Board unless a final and effective scheme is framed by the Housing Board under the provisions of Sections 37 to 56. The said limitation applies only where the land is sought to be acquired avowedly for the purpose of execution of a housing or improvement scheme prepared by the Housing Board under Chapter-VII of the Tamil Nadu Housing Board Act. In other words, unless the notification under section 4 of the land Acquisition Act expressly states that land proposed to be acquired is required for executing a housing or improvement scheme (i.e., a final and effective scheme) framed by the Housing Board under the provisions of the Tamil Nadu Housing Board Act, the principle and ratio of Mohammed Yousef is not attracted. Mere statement in the notification that land is required for the purpose of the Housing Board would not by itself attract the said principle and ratio. In the instant appeals, the notifications do not even state that the land proposed to be acquired is meant for the purpose of the Housing Board.

With respect to the other decision relied upon by the learned counsel for respondents, viz., Maharashtra Housing and Area Development Authority & Anr. V. Gangaram & Ors. (1994 (2) S.C.C.89.), (to which one of us, K.Ramaswamy, J. was a party), it may be said that it

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* This is the position, it may be reiterated, under the Tamil Nadu Housing Board Act without reference to the Amendment Act 5 of 1992. If the Amending Act which has been given respective effect from April 22, 1961 is taken into account, it is obvious that even in a case where land is proposed to be acquired avowedly for executing a housing or improvement scheme framed by the Housing Board under Chapter-VII of the Act, it is not necessary that there should be a final and effective scheme in existence before issuing a notification under Section 4 of the Land Acquisition Act. Sub-section (2) of Section 70, added by the said Amendment Act, reads as follows: "Notwithstanding anything contained in this Act, proceeding under the Land Acquisition Act, 1894 (Central Act I of 1894) may be taken for acquiring any land or any interest therein under sub-section (1) even before framing any housing or improvement scheme.

applies the ratio of Mohammed Yousef in the light of the scheme and provisions of the Maharashtra Housing and Area Development Act, 1976. For the purpose of these cases, it is not necessary to say more about the said decision, particularly because we have had no occasion to examine the provisions and the scheme of the Maharashtra Act.

The next question is whether the public purpose stated in the three notifications concerned is vague. It must be remembered that what is vague is a question of fact to be decided in each case having regard to the facts and circumstances of that case. By saying that the public purpose in the said notifications is vague what the respondents really mean is not that is not a public purpose but that since the public purpose is expressed in vague terms and is not particularised with sufficient specificty, they are not in a position to make an effective representation against the proposed acquisition.

In Aflatoon, the Constitution Bench dealt with the question whether the acquisition of a large extent of land for a public purpose, viz., "the planned development of Delhi" was vague. Mathew,J.,

speaking for the Constitution Bench, stated that" according to the section....it is only necessary to state in the notification that the land is needed for a public purpose" and then added " the wording of Section 5-A would make it further clear that all that is necessary to be specified in a notification under s.4 is that the land is needed for a public purpose. One reason for specification of the particular public purpose in the notification is to enable the person whose land is sought to be acquired to file objection under s.5A. Unless a person is told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition under s.5A". The learned Judge then referred to the ratio of Munshi Singh and held, "we think that the question whether the purpose specified in a notification under s.4 is sufficient to enable an objection to be filed under s.5A would depend upon the facts and circumstances of each case". The learned Judge also referred to the decision in Arnold Rodricks and held: "(1)n the case of an acquisition of a large area of land comprising several plots belonging to different persons. the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the case of an acquisition of a small area, it might be practically difficult to specify the particular public purpose for which each and every item of land comprised in the area is needed." [Emphasis added] In Lila Ram etc. V. Union of India & Ors.etc (1976(1) S.C.R.341), another Constitution Bench held that the public purpose mentioned in the notification concerned therein,viz., "for the execution of the Interim General Plan for the Greater Delhi", is specific in the circumstances and does not suffer from any vagueness. The Court again pointed out that the notification does not pertain to a small plot but a huge area covering thousands of acres and in such cases, it is difficult to insist upon greater precision for specifying the public purpose because it is quite possible that various plots covered by the notification may have to be utilised for different purposes set out in the Interim General Plan. Of course, that was a case where the Interim General Plan was prepared and published by the Government after approval by the Cabinet as a policy decision for development of Delhi as an interim measure till the master plan could be made ready.

The above decisions, and particularly the decision in Aflatoon, do establish that whether the public purpose stated in the particular notification is vague or not is question of fact to be decided in the facts and circumstances of each case and further that where a large extent of land is acquired, it would not be proper to insist upon the Government particularising the use to which each and every bit of the land so notified would be put to. The three notifications concerned herein, we are told, pertain to about 400 acres in all. The parties have not furnished copies of the notifications in their entirety. Only Sri Ashok Sen has supplied the full text of the notification dated February 19, 1975. It shows that a total extent of ninety seven acres one cent was proposed to be acquired, affecting the holdings of about twenty five persons, some of them holding such small extents of 0.26 or 0.25 acres.

So far as the decision in Munshi Singh (decided by the Bench comprising K.S.Hegde, A.N.Grover and D.G.Palekar,JJ.) is concerned, it does contain certain observations supporting the petitioners' contentions but it must be remembered that this decision was referred to and explained in Aflatoon.In Aflatoon, it was stated that whether the public purpose stated in a particular notification is vague or not is a question of fact to be decided in each case and cannot be treated as a question of law. It was also emphasised that where large extents are sought to be acquired for development or similar purposes, it would not be possible to specify how each owner's bit would be utilised and for

what purpose. We are of the respectful opinion that the decision in Munshi Singh should be read subject to the explanation and the holding in Aflatoon which is a decision of a Constitution Bench. As pointed out hereinbefore, in a subsequent decision in Lila Ram, another Constitution Bench has also emphasised the very same aspect. We are, therefore, of the opinin that Munshi Singh does not come to the rescue of the writ petitioners-respondents in these matters.

There is yet another and a very strong factor militating against the writ petitioners. Not only did they fail to file any objections in the enquiries held under Section 5-A, they also failed to act soon after the declarations under Section 6 were made. As stated above, the declarations under Section 6 were made in the Year 1978 and the present writ petitions were filed only sometime in the year 1982-83 when the awards were about to be passed. It has been pointed out in Aflatoon that laches of this nature are fatal. Having held that the public purpose specified in the notification concerned therein is not vague, Mathew, J. made the following observations :

> "Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non- specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under s.6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under s.9 were issued to them.....
>
> Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration under s.6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under s.4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under s.4 and the declaration under s.6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the laches and delay on the part of the petitioners (See Tilokchand Motichand and Ors. V. H.B.Munshi and Another (1969 (2) S.c.R.824); and Rabindranath Bose and Others v. Union of India & Ors (1970 (2) S.C.R.697).
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> From the counter affidavit filed on behalf of the Government, it is clear that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to Cooperative housing societies. To quash the notification at this stage would disturb the rights of third parties who are not before the Court."

The above observations speak for themselves-and are fatal to the writ petitioners.

We may next take up the other ground assigned by the High Court for quashing the notifications, viz., the delay in passing the award after the declaration under Section 6 were published. While we agree that there has certainly been delay in passing the award, but this circumstance must be weighed against the beneficial counter-vailing provision contained in Section 48-A, added by the Tamil Nadu Legislature in the Land Acquisition Act. Section 48-A reads:

> "48-A. Compensation to be awarded when land not acquired within two years.--
>
> (1) Where the Collector has not made an award under Section 11 in respect of any land within a period of two years from the date of the publication of the declaration under Section 6 or of the issue of a notice under clause (c) of sub-section (3) of Section 40 of the Madras City Improvement Trust Act, 1950, or of the publication of a notification under Section 53 of that Act as the case may be, the owner of the land shall, unless has been responsible for the delay to a material extent be entitled to receive compensation for the damage suffered by him in consequence of the delay.
>
> (2) The provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

According to this provision, if the award is not made within two years of the declaration under Section 6, the owner of the land shall be entitled to receive compensation for the damages suffered by him in consequence of the delay unless he is himself responsible for the dely to material extent. Subsection (2) further says that for determination of the compensation under the said section, the provisions in Part-III of the Land Acquisition Act shall apply. Even apart from this provision, there is yet another circumstance which should be taken note of in these appeals. In these cases, the land acquisition proceedings were pending on 30th day of April, 1982 and if so, the persons interested would be entitled to the additional amount by sub-section (1-A) of Section 23 of the Land Acquisition Act. According to the said sub-section, "(I)n addition to the market value of the land..... the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier." The provisions in this sub- section are designed to compensate the owners of the land for the rise in prices during the pendency of the land acquisition proceedings. It is a measure to off-set the effects of inflation and the continuous rise in the values of properties over the last few decades and appears to be more beneficial to the claimants. In view of Section 48(A) [supra), the provision in Section 23(1-A) and the delay on the part of the writ petitioners in not approaching the Court within a reasonable time, we are of the opinion that the delay in passing the awards after the publication of the declaration under Section 6 cannot be held to be fatal.

We may append a note of caution. This holding of ours may not be understood as saying that land acquisition proceedings can be delayed indefinitely and that the provision in Section 23(1-A) is an

adequate recompense for such delay. No such proposition can be countenanced. These proceedings must be concluded with due expedition. It is this concern which has led the Parliament to enact various time limits for making the declaration under Section 6 and for making the award by way of Amendment Act 68 of 1984. The person who is deprived of the land must be given his due compensation without avoidable delay. This obligation flows from the duty to exercise the statutory power in a reasonable and fair manner, more particularly where the subject-matter is acquisition of land/property. [See Ram Chand and others V. Union of India and Others (1994 (1) S.C.C.44.)]. It is only in the particular facts and circumstances of this case, mentioned above, that we are disinclined to interfere.

There remains the last ground assigned by the High Court in support of its decision. The High Court has held that the noncompliance with sub-rule (b) and (c) of Rule 3 of the Rules made by the Government of Tamil Nadu pursuant to Section 55(1) of the Land Acquisition Act vitiates the report made under Section 5-A and consequently the declarations made under Section 6. The said sub-rules provide that on receipt of objections under Section 5-A, the Collector shall fix a date of hearing to the objections and give notice of the same to the objector as well as to the department. It is open to the department to file a statement by way of answer to the objections filed by the land-owners. The submission of the writ petitioner was that in a given case it may well happen that in the light of the objections submitted by the land-owners, the concerned department may decide to drop the acquisition. Since no such opportunity was given to the department concerned herein, it could not file its statement by way of answer to their objections. This is said to be the prejudice. We do not think it necessary to go into the merits of this submission on account of the laches on the part of the writ petitioners. As stated above, the declaration under Section 6 were made some in the year 1978 and the writ petitioners chose to approach the Court only in the Years 1982-83. Had they raised this objection at the proper time and if it were found to be true and acceptable, opportunity could have been given to the Government to comply with the said requirement. Having kept quiet for a number of years, the petitioners cannot raise this contention in writ petitions filed at a stage when the awards were about to be passed.

For the above reasons, the appeals are allowed, the judgment of the High Court under appeal herein is set aside and the writ petitions filed by the respondents, from which these appeals arise, are dismissed. No costs.

CIVIL APPEAL NOS. 9822,9814-18 AND 9819 OF 1995. [ARISING OUT OF S.L.P. (C) NOS.13725 OF 1992, 7332-36 OF 1992 AND 6588-89 OF 1992.] Leave granted.

These appeals are preferred against the judgment of the Madras High Court quashing the notifications issued under Section 4(1) of the Land Acquisition Act, 1894. In view of our judgment in Civil Appeal Nos.1865-70 of 1992, these appeals are accordingly allowed. No costs.

CIVIL APPEAL NOS.9823-24 OF 1995 [ARISING OUT OF S.L.P.(C) NOS.1785-86 OF 1995.

LEAVE GRANTED.

These appeals arise form the judgment of the Madras High Court dismissing the writ petitions in view of the Amendment Act 5 of 1992. The High court has upheld the validity of the Amendment Act. The notifications (s) under section 4 concerned herein has not been placed before us. No separate argument is addressed in these matters. Accordingly, following our judgment in Civil Appeal No.1865- 70 of 1992, these appeals are also dismissed. No costs.

CIVIL APPEAL NO.1740 OF 1995
AND
CIVIL APPEAL NOS.9838-39,M 98366-37 OF 1995 [ARISING OUT OF S.L.P. (C) NOS.14617-20 OF 1994]
Leave granted.

These appeals are preferred against the judgment of the Division Bench of the Madras High Court upholding the constitutional validity of the Tamil Nadu Housing Board Amendment Act 5 of 1992. The purpose of acquisition stated in the notifications under Section 4(1) of the Land Acquisition Act is "a development of area by building houses by the Tamil Nadu Housing Board". In view of our judgment in Civil Appeal Nos.1865-70 of 1992, the notification must be deemed to the valid even without reference to the Tamil Nadu Amendment Act 5 of 1992. These appeals are accordingly dismissed .

No Costs.