Supreme Court of India
Narayan Govind Gavate Etc vs State Of Maharashtra on 11 October, 1976
Equivalent citations: 1977 AIR 183, 1977 SCR (1) 763
Author: M H Beg
Bench: Beg, M. Hameedullah

PETITIONER:
NARAYAN GOVIND GAVATE ETC.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT11/10/1976

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
RAY, A.N. (CJ)
SINGH, JASWANT

CITATION:
1977 AIR 183 1977 SCR (1) 763
1977 SCC (1) 133
CITATOR INFO :
RF 1981 SC 818 (60)
R 1986 SC2025 (5)
D 1988 SC1459 (16)

ACT:
Land Acquisition Act , 1894, ss. 5A, 6 and 17(4)--Burden of establishing urgency--On whom lies.

HEADNOTE:
Certain lands were sought to be acquired by the State Government under the provisions of the Land Acquisition Act, 1894, the public purpose stated being the development and utilisation of the lands as a residential and industrial area. Identical notifications under s. 4 were issued in all the cases. In one group of lands, declarations that the provisions of s. 5A shall not apply in respect of the lands were issued under s. 17(4). With respect to a second group, declarations under s. 17(4) were issued but were not followed up with the notification. With respect to a third group no notification under s. 17(4) was issued but after the petitioners filed objections under s. 6 the notification was issued accompanied by the declaration of urgency under s. 17(4).

The owners of the land sought to have the proceedings quashed on the grounds that, (1) there was no public purpose, and that (2) there was no urgency justifying the notifications under s. 17(4) and dispensing with the enquiry under s. 5A.

The High Court held that, (1) the notifications under s. 4(1) were valid, and that (2) the State had not discharged its burden of showing facts constituting the urgency which impelled it to issue the declarations under s. 17(4) dispensing with the enquiry under s. 5A, and, therefore, those declarations were invalid, and that the parties were relegated to the position they could take up in the absence of declarations under s. 17(4). Both sides appealed to this Court. In the appeals by the State, it was contended by the appellant-State that the burden of proving that there was no. urgency was on the owners of the. lands.

Dismissing all the appeals,

HELD: (1) The notifications under 8. 4(1) of the Act were valid in all the cases. [769 G]

(2) (a) The rules regarding burden of proof are set out in the Indian Evidence Act, 1872. Section 101 of the Evidence Act lays down that whoever desires any Court to, give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist, and provides that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Section 103 provides that the burden of proof as to any particular fact lies on that person who wishes the 'Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. Section 106 lays down that when any fact is especially within the knowledge of any person the burden of proving that fact is upon him. Section 114 of the Evidence Act covers a wide range of presumptions of fact which can be used by the Courts in the course of administration of justice to remove lacunae in the chain of direct evidence before it. [774 C--E; 775 C-E]

(b) The result of a trial or proceeding is determined by a weighing of the totality of facts, circumstances and presumptions operating in favour of one party as against those which may tilt the balance in favour of another. Such weighment always takes place at the end of a trial or proceeding which cannot, for purposes of this final weighment be split up into disjointed and disconnected parts. What is weighed at the end is one totality against another and not

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selected bits or scraps of evidence against each other. Such total effect of evidence is determined at the end of a proceeding not merely by considering the general duties imposed by ss. 101 and 102 but also by the special or particular ones imposed by other provisions such as ss. 103 and

106. In judging whether a general or particular or special onus has been discharged the Court will not only consider the 'direct effect of the oral and documentary evidence led but also what may be indirectly inferred because certain facts have been proved or not proved though easily capable of proof if they existed at all and such proof of other facts may raise either, a presumption of law or fact. The party against which a presumption may operate can and must lead the evidence to show why the presumption should not be given effect to. If the party which initiates the proceeding or comes with a case to Court offers no evidence in support of it. the presumption is that such evidence does not exist and if some evidence is shown to exist on a question in issue but the party which has it within its power to. produce it does not, despite notice to do so, produce it, the natural presumption is that it would, if produced, have gone against it. Similarly, a presumption arises from failure to discharge a special or 'particular onus. The doctrine of onus of proof becomes unimportant when there is sufficient evidence before the Court to enable it to reach a particular conclusion in favour of or against a party. The principle of onus of proof becomes important in cases of either paucity of evidence or where evidence given by two sides is so equivalenced that the Court is unable to hold where the truth lay. The question whether an onus probandi has been discharged is one of fact. Sufficiency of evidence to discharge the onus probandi is not examined by this Court as a rule in appeals by special leave granted under Art. 136 of the Constitution,. but placing an onus where it did not lie may be. so examined in appropriate cases.
[775 H; D--G; 778 C-D; 774

Swadeshi Cotton Mills Co. Ltd. v. The State of U.P. & anr. [1962] 1 S.C.R. 422. 434 and Raja Anand Brahma Shah v. State of U.P. [1967] 1 S.C.R. 373 at 381 referred to.

I. G. Joshi etc. v. State of Gujarat & anr. [1968] 2 S.C.R. 267 held inapplicable.

Section 17(4) of the Land Acquisition Act has to be read with s. 4(1) and 5A of the Act. The immediate purpose of a notification under s. 4(1) of the Act is to enable those who may have any objections to lodge them for purposes of an enquiry under s. 5A. Considering the nature of the objections which are capable of being successfully taken under s. 5A, the enquiry should be concluded quite expeditiously. The purpose of s. 17(4) is obviously not merely to confine action under it to waste and arable land but also to situations in which an enquiry under s. 5A will serve no useful purpose, or, for some overriding reason, it should be dispensed with. The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under s. 5A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under s. 5A which has to be considered. [781 G--H;

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(d) Even a technically correct recital in an order or notification stating that the conditions precedent to the exercise of a power have been fulfilled may not debar the Court in a given case from considering the question whether, in fact, those conditions have been fulfilled. And, a fortiori the Court may consider and decide whether the authority concerned has applied its mind to really relevant facts of a case with a view to determining that a condition precedent to the exercise of a power has been fulfilled. If it appears upon an examination of the totality of facts in the case, that the power conferred has been exercised for an extraneous or irrelevant purpose or that the mind has not been applied at all to the real object on purpose of a power, so that the result is that the exercise of power could only serve some other or collateral object, the Court will interfere. [779 E---F]

(e) The High Court was wrong in the present case in laying down a general proposition that the presumption of regularity attaching to an order containing a technically correct recital did not Operate in cases in which s. 106, Evidence Act, was applicable. An order or notification containing a recital technically correct on the face of it raises a presumption of fact under s. 114, illustration (e) That presumption is based on the maxim omain praesumuntur rite esse acta, that, is, all acts are presumed to have been rightly and regularly done. 'This presumption, however, is one of fact. It is an optional presumption which can be displaced by circumstances indicating that the power lodged in an authority or official has not been exercised in accordance with tile law. The totality of circumstances has to be examined including the recitals to determine whether and to what extent each side had discharged its general or particular onus.

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[777 E--F]

(f) The High Court had, however, correctly stated the limited grounds on which even a subjective opinion as to the existence of the need to take action under s. 17(4) of the Act can be challenged, namely, main fides, no application of mind and total want of material on which the opinion is formed. Therefore, it is for the petitioner to substantiate the grounds of his challenge under s. 101 and 102. That is, the. petitioner has to either lead evidence or show that some evidence has come from the other side to indicate that his challenge to a notification or order is made good. If he does not succeed in discharging that duty his petition will fail. [776 B--C]

In the present case, in addition to the bare assertions of the owners of the land that the particular urgency contemplated by s. 17(4) did not exist there were other facts and circumstances including non-disclosure of any facts and circumstances which could easily justify the use of s. 17(4)

and which could have been disclosed if they existed; and, therefore, the petitioners should be held to have discharged their general onus under s. 106 of the Evidence Act. Thus the High Court was right in quashing the notifications under s. 17(4).[778 E]

(g) In the present case, the public purpose. was sufficiently specified to he prima facie a legally valid purpose. The High Court thought it vague; but, that did not really affect the judgment of the High Court so much as the total absence of facts and circumstances which could possibly indicate that this purpose. had. necessarily to be carried out in such a way as to .exclude the application of s. 5A of the Act. Therefore, a .triable issue did arise in these cases and was decided by the High Court. This issue was whether the conditions precedent to exercise of power under s. 17(4) had been fulfilled or not. Such a question can only be decided rightly after determining what was the nature of compliance with the conditions of s. 17(4) required by the Act. [776 D--E]

(i) The public. purpose indicated is. the development of an area for industrial and residential purposes. This, in itself, did not make the taking of immediate possession imperative without holding even a summary enquiry under s. 5A.

. On the other hand, the execution of such .schemes generally take sufficient period of time to enable at least summary inquiriess under s. 5A of the Act to be completed without any impediment to the execution of the scheme. (ii) All schemes relating to development of industrial and residential areas must be urgent in the context of the. country's need for increased production and more residential accommodation. Yet, the very nature of such schemes of development does not appear to demand such emergent action as to eliminate summary enquiries under s. 5A. (iii) There is no indication whatsoever in the affidavit filed on behalf of the State that the mind of the Commissioner was applied at all to the question whether it was a case necessitating the elimination of the enquiry under s. 5A. The recitals in the notification on the contrary indicate that elimination of the enquiry under s. 5A was treated as an automatic consequence of the opinion formed on other matters. The recital does not say at all that any opinion was formed on the need to dispense with the enquiry under s. 5A.[782 G; 783 C-D]

The burden, therefore, rested upon the State to remove the defect, if possible, in recitals by evidence to show that some exceptional circumstances existed which necessitated the elimination of an enquiry under s. 5A and that the mind of the Commissioner was applied to this essential question. [783 E]

(h) The High Court has thus correctly applied the provisions of s. 106 of the Evidence Act to place the burden upon the State to prove those special circumstances, although the High Court was not quite correct in stating that

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some part of the initial burden of the petitioners under ss. 101 and 102 of the Evidence Act had been displaced by the failure of the State to discharge its duty under s. 106 of the Act. The correct way of putting it would have been to say that the failure of the State to produce the evidence of facts especially within the knowledge of its officials, which rested upon it under s. 106 of the Evidence Act, taken together with other evidence and the attendant facts and circumstances, including the contents of recitals, had enabled the petitioners to discharge their burdens under ss. 101 and 102 Of the Evidence Act in these particular cases.

[783 F--G]

ARGUMENTS

For the Appellant:

It was urged on behalf of the appellant State that the High Court was in error in placing the burden of proof on the State. Reliance was placed on the decision of the Supreme Court in [1962] 1 S.C.R. 422 (pages 432, 433 and 434). In particular it was urged that where a statute prescribes something as a condition precedent for the exercise of statutory power, and there is a recital of existence of that condition in the notification then it is presumed that the statutory condition exists and it is for the' other side to bring material before the Court to show that recital is not supported on any evidence or is made malafide. Similarly, in [1967] 1 S.C.R. 373 Raja Anands case the very scope of section 17(4) was discussed and the State relied on the observations at page 381 indicating the scope of judicial review original petitioners have not brought their case within the grounds mentioned in this case.

The Barium Chemicals case and other cases cited can be easily distinguished on the ground that the statutory requirements for the exercise of particular power, for example section 237 of the Companies Act are differently worded where certain circumstances are required to be present. The Land Acquisition Act does not require the existence of any such circumstances. Besides, a decision of the Supreme Court has clearly indicated the scope of judicial review in [967] 1 S.C.R. 373 and the respondents have not shown why any different view should not be taken.

Cases like ILR 67 Gujarat 620, AIR 1964 Punjab 477 and ILR 1970 Cuttack 21 can be easily distinguished. There specific allegations were made by the petitioners giving reasons as to why they challenged the notifications. In reply thereto the State was bound to bring the material to negative those charges. In the present case if such allegations were made by the writ petitioners the State would have certainly placed all the necessary materials to negative those allegations. In the absence of any such allegation the correct rule to apply was the one stated in [1962] 1 SCR 422 & 433. Apart from this it may be noticed that by amending paragraph XVI (ARP) was introduced which made some

effort to make concrete allegations regarding the invalidity of the notifications under section 17(4). The' substance of these allegations is that out of the whole area which is to be acquired urgency clause has been applied only to some areas and, therefore, petitioners prayed that an inference of' exercise of powers in a casual and lighthearted manner should be drawn. To this averment, and since such concrete allegation was made a concrete reply has been given by the State in para 6 at Record Page 55 explaining why some lands were selected for urgency clause and why some notifications were issued earlier and why others came to be issued later. It is not open to. the respondents to enlarge their attack on grounds other than those which are stated in para. 16A.

Lastly it was urged that the satisfaction under section 17(4) is not subjective satisfaction but must be an objective test because section 17(4) should be deemed to be controlled by section 17 sub-sections 1 and 2. In the first place such a, contention was never raised in the High Court. Secondly, there are number of decisions of the Supreme Court where the opinion which is to be formed under section 17(4) is held to be subjective satisfaction. Thirdly,

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the contention does not interpret complete provisions of section 17(1), 17(2) and 17(4). It is submitted under section 17(1) and 17(2) on one' hand ,and the power under 17(4) are two separate and independent powers which can be exercised at different stages of the Land Acquisition proceedings. Vide AIR 1970 Allahabad 151--Hakim singh versus State of Uttar Pradesh, under 17(1) possession can be taken without there being an award under section 11 but there has to be a publication of a notice under section 9(1) and also a notification under section 6 preceded by an inquiry under section 5(a). In such cases and the cases covered by 17(2) the urgency may be determined on an objective basis but the whole purpose of section 17(4) is to dispense with an enquiry under section 5(a) which is to be followed again by a notification under section 6 and for such a purpose all that is required is that in the case of any land in the opinion of the appropriate Government the provisions of sub-section 1 or sub section 2 are applicable. In other words the lands must be either waste of arable lands (which is, of course to be determined objectively) but so far as the question of urgency is concerned it is the opinion that the Government has to form and that is not to be established by any objective test but its subjective satisfaction.

For the Respondents:

The Appellant (the State of Maharashtra) tried to argue that lack of bonafides were not argued in the Court below. In the pleadings of the Respondents (the writ petitioners) it was urged at pages 10 and 11 of the record that in fact it is significant that in some cases the lands which are sought to be acquired for the same purpose vis-a-vis for

development and utilisation of the land as industrial and residential area the urgency clause has not been applied. It was further stated at page 11 that the power under Section 17(4) has 'been exercised in casual and light-hearted manner . without there being any proper application of mind to the condition requisite for the exercise of that _power. The said point was argued before the High Court and the High Court dealt with the same at pages 61 to 70 of the record.

It was argued before this Honble Court that the circumstances under Section 17(4) is not subjective satisfaction but an objective test since Section 17(4) is controlled by Section 17(1) and (2).

It was further argued that the Government never applied its mind nor did it place before the High Court any material to show that there was any urgency with respect to some of the lands and no urgency in respect to the others. It is admitted that the lands in all these cases were acquired for the same purpose inter alia for the development and utilisation of the said lands as an industrial and residential area.

It was further argued that the burden of proof on the facts of these cases would be on the State since the reasons for urgency are only in the knowledge of the authority issuing the Notification. The cases cited by the Counsel for the State have no application since in those cases the petitioners could establish that the impugned notification was not bona fide.

In this case the respondent, land owners, had in their Writ Petitions specifically raised the question that the authority had not applied its mind and treated it light-heartedly 'and the Notification was not bona fide.. The State however did not place any material before the Court to show that the authority had applied its mind or there was any clue to the urgency.

The respondents have 'been deprived of their right to prefer objections under Section 5A of the Act and those objections are to be filed within 30 days. The notifications in this case have been made at the interval of months and even more than a year. The notification under Section 17(4) was made with respect to some lands and it was not made with respect to other. The State has not satisfactorily explained the reasons for this. From all these facts and circumstances the respondents argue that the notification under

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Section 17(4) was not bonafide and the authority had not applied its mind, and the High Court was right in setting aside the said notification.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1616-1621 Appeals from the Judgment and Order dated 16th/l9th of Jun& 1967 of the Bombay High Court in S.C.A. Nos. 1971/64, 115:, 216, 343, 345 and 579/65 and CIVIL APPEAL NOS. 1411-1413/69 Appeals from the Judgment and Order dated 16-6-67 of the Bombay High Court in S.C.A. Nos. 1971/64, 115 and 345/65.

M. Natesan, A.K. Sen (In CA 1412/69), Nannit Lal and Lalita Kohli In CAs. 1616-1621/69 and Respondents in CAs. 1411-1413/ 69.

M.H. Phadke, M.N. Shroff for Respondents In CAs. 16161621/69 and for Appellants in CAs. Nos. 1411-1413/69. The Judgment of the Court was delivered by BEG, J. There are nine appeals before us, after certifi- cation of fitness of the cases for appeals to this Court, directed against orders governed by the same judgment of a Division Bench of the High Court of Maharashtra disposing of Writ Petitions relating to four groups of lands, which were sought to be acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act').

A notification dated 11th October, 1963, under' Section 4 of Act, was published in the Maharashtra Government Gazette with regard to the first group. The public purpose recited in the notification was "development and utilisation of said land as a residential and industrial area". The noti- fication goes on to state:

"AND WHEREAS the Commissioner, Bombay Division, is of the opinion that the said lands were waste or arable lands and their acquisition is urgently necessary, he is further pleased to direct under sub-section (4) of Section 17 of the said Act, that the provisions 01; Section 5-A of the said' Act shall not apply in respect of the said land". Thereafter, a notification was issued under section 6 of the Act on 19th December, 1963, followed by notices under Sec- tion 9(3) and (4) the Act.

With regard to the second group of lands, identically similar notifications under Section 4 together with identi- cally worded. declarationcure-direction, under section 17(4) of the Act, were issued on 13th June, 1965. As proceedings with regard to land comprised in this group were not fol- lowed up by notification under section 6 of the Act. it was conceded by Counsel, in the course of arguments on behalf of the State in the High Court, that the proceedings had: become invalid.

We arc, therefore, not concerned with lands in this.' group in the appeals now before us: Nevertheless, it is not devoid of significance that the terms of the notification under section 4(1) and the declaration-cure-directions, under section 17(4) of the Act, in this group are also identical with those in the first two groups. This cer- tainly suggests that directions under section 17(4) could have been. mechanically issued in all the groups in identi- cal terms without due application of mind to the factual requirements prescribed by law.

The third group of land was also the subject matter of identically similar notifications under section 4 of the. Act dated 13th June, 1964, together with identically worded declarations cum directions under section 17(4) of the Act. This land was notified under section 6 of the Act on 28th September, 1964, followed by the notice under section 9; sub-ss. (3) and (4) of the Act on 28th October, 1964. With regard to the land= in the fourth group, a notifi- cation under Section 4 01' the Act took place

on 13th Novem- ber, 1963, in substantially the same terms as those in the other three groups; but, there was no direction under sec- tion 17(4) of the Act. Consequently, the appellant filed his objection' on 9th January, 1964. Later, a notification under section 6 of the Act on 13th July, 1964, was accompa- nied by identically worded vague declaration of urgency under section 17(4) of the Act. This strange course of action suggests that notification under section 17(4) was probably made only to save the botheration of the inquiry begun under section 5A of the Act which should and could have been concluded quite easily before 13th July, 1964. In Writ Petitions before the High Court, the submission that no public purpose existed was not pressed in view of the decision of this Court in Smt. Somavanti & Ors. v. The State of Punjab & Ors. U') In Shri Ramtanu Co-operative Housing Society Ltd. & Anr. v. State Maharashtra. & Ors.(2) acquisition of land for development of industrial areas and residential tenements for persons to live on industrial estates was held to be legally valid for a genuinely public purpose. This ground, therefore, need not detain us, although file appellants, who are owners of the properties acquired, have formally raised it also by means of the six appeals filed by them (Civil Appeals Nos. 161'6-1621 of 1969). In agreement with the High Court, we hold that notification under section 4(1) of the Act were valid in all these cases.

The real question which has been argued before us is raised by the State of Maharashtra in its three appeals Nos. 1411 to 1413 of 1969, against the view taken by a Division Bench of the Bombay High Court in its judgment dated 16th June, 1967. It had held that, although notifications under section 4(1) of the Act were valid, yet, the Government of Maharashtra had not discharged its burden of showing facts constituting the urgency which impelled it to give declara- tionscum-directions under section 17(4) of the Act dispens- ing with the (1)[1963] 2 SCR 774 (2) [1971] 1 SCR 719 at enquiries under section 5A of the Act, Therefore, actions taken pursuant to those declarations under section 17(4) of the Act were held to be invalid and quashed. The result was that parties were relegated to the position they could take up in the absence of declarations under section 17(4) of the Act in the cases decided by the High Court. The correctness of this view is assailed before us. The case of the State of Maharashtra is stated as fol- lows in the affidavit filed by the Special Land Acquisition officer:

"I deny, the allegation that the urgency clause has been applied without any valid reason. I respectfully submit that whether an urgency exists or not for exercising the powers under section 17(1) of the Act is a matter solely for the determination of the State Government or the Com- missioner. Without prejudice to this, respect- fully submit that as mentioned in the impugned Notifications, the 3rd Respondent formed the opin- ion that the said lands were urgently acquired for the public purposes mentioned therein, and, accord- ingly, he was pleased to so direct under the provi- sions of Section 17(4) of the Act."

The respondent No. 3 referred to in the affidavit is the Commissioner of Bombay Division. It is significant that, in the affidavit filed in reply to the assertions of peti- tioners, denying the existence of such urgency as to attract the provisions of section 17(4) of the Act. the position primarily taken up, on behalf of the State of Maharashtra, was that the existence of the urgency is not a justiciable matter at all left for determination by Courts. After that, there is a bare submission stating the alternative case that the 3rd respondent had formed the opinion that the said lands were urgently required for the public purpose mentioned therein. But, no facts or particulars are stated to which

the mind of the Commissioner could have been ap- plied in forming the opinion that the situation called for declarations-cum-directions, under section 17(4) of the Act, to dispense with inquiries under section 5A of the Act in these cases. It is important to. remember that the mind of the officer or authority concerned has really to be directed towards formation of an opinion on the need to dispense with the inquiry under Section 5A of the Act.

It is true that, in such cases, the formation of an opinion is a subjective matter, as held by this Court re- peatedly with regard to situations in which administrative authorities have to form certain opinions before taking actions they are empowered to take. They are expected to know better the difference between a right or wrong opinion than Courts could ordinarily on such matters. Neverthe- less, that opinion has to be based upon some relevant mate- rials in order to pass the test which Courts do impose. That test basically is: was the authority concerned acting within the scope of its powers or in the sphere where its opinion and discretion must be permitted to have full play? Once the Court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some materiaL, however meagre, on which it could reasonably base its opinion, the Courts should not and will not interfere. There might, however, be cases in which the power is exercised in such an obviously arbitrary or perverse fashion, without regard to the actual and undeniable facts, or, in other words, so unreasonably as to leave no doubt whatsoever in the mind of a Court that there has been an excess of power. There may also be cases where the mind of the authority concerned has not been applied at all, due to misunderstanding of the law or some other reason, what was legally imperative for it to consider.

The High Court had put its point of view in the following words:

"When the formation of an opinion or the satisfaction of an authority is subjective but is a condition precedent to the exercise of a power, the challenge 'to the formation of such opinion or to such satisfaction is limited, in law, to three points only. It can be challenged, firstly, on the ground of malafides; secondly, on the ground that the authority which formed that opinion or which 'arrived at such satisfaction did not apply its mind to the material on which it formed the opinion or arrived at the satisfaction; and, third- ly, that the material on which it formed its opin- ion or reached the satisfaction was so insuffi- cient that no man could reasonably reach that conclusion. So far as the third point is con- cerned, no Court of law can, as in an appeal, consider that, on the material placed before the authority, the authority was justified in reaching its conclusion. The Court can interfere only in such cases where there was no material at all or the material was so insufficient that no man could have reasonably reached that conclusion. It is not necessary to refer to the authorities which lay down these propositions because they have by now been well established in numerous judgments and they are not in dispute before us at the Bar. In this case, however, there is no challenge on any of these three grounds. The dispute in this case therefore narrows down to the point as to the burden of proof. In other words, the dispute is whether it is the petitioner who has to bring the material before the Court to support his contention that no urgency existed or whether, once the peti- tioner denied that any urgency existed, it was incumbent upon the respondent to satisfy the Court that there was material upon which the respondents could reach the opinion as mentioned in section 17(4)."

On the evidence before it, the High Court recorded its conclusions as follows:

"In the case before us the petitioner has stated in the petition more than once that the urgency clause had been applied without any valid reason. The urgency clause in respect of each of the said two notifications concerning the lands m groups Nos. 1 and 2 is contained in the relative section 4 notification itself. The public purpose stated in the notification is 'for development and utiliza- tion of the said lands as an industrial and resi- dential area'. To start with, this statement itself vague, in the sense that it is not clear whether the development and utilization of the lands referred to in that statement was confined to the lands mentioned in the schedule to the Notification or it applied to a. wider area of which such lands formed only a part. So far as the affidavit in reply is concerned, no facts whatever are stated. The affidavit only states that the authority, i.e., the Commissioner of the Bombay Division, was satisfied t,hat the possession of the said lands was urgently required for the purpose of carrying out the said development. Even Mr. Setal- vad conceded that the affidavit does not contain a statement of facts on which the authority was satisfied or on which it formed its opinion. It is, therefore, quite clear that the respondents have failed to bring on record any material what- ever on which the respondents formed the opinion mentioned in the two notifications. The notifica- tions themselves show that they concern many lands other than those failing in the said first and third groups. It is not possible to know what was the development for which the lands were being acquired, much less is it possible to know what were the circumstances which caused urgency in the taking of possession of such lands. We have held that the burden of proving such circumstances, at least prima facie is on the respondents. As the respondents have brought no relevant material on the record, the respondents have failed to dis- charge that burden. We must, in conclusion, hold that the urgency provision under section 17(4) was not validly resorted to".

It has been submitted on behalf of the State that we need decide nothing more than a simple question of burden of proof in the cases before us. We do not think that a question relating to burden of proof is always free from difficulty or is quite so simple as it is sought to be made out here. Indeed, 'the apparent simplicity of a question relating to presumptions and burdens of proof, which have to always viewed together, is often deceptive. Over simplification of such questions leads to erroneous statements and misapplications of the law.

Our Evidence Act is largely a codification, with certain variations, of the English law of evidence, as it stood when Sir James Fits-James Stephens drafted it. Therefore, in order to fully grasp the significance of its provisions we have to sometimes turn to its sources in English' law which attained something resembling clarity only by stages.

In Woolmington v. Director of Public Prosecu- tions(1), Lord Sankey pointed out that rules of evidence contained in early English cases are quite confusing. He observed: "It was only later that Courts began to discuss such things as presumption and onus". He also said that "the word onus is used indifferently throughout the books. (1) [1935] A.C. 462.

sometimes meaning the next move or step in the process of proving and sometimes the conclusion". In Phipson on Evidence (11th Edn.) (at page 40, paragraph 92), we find the principles stated in a manner which sheds considerable light on the meanings of the relevant provisions of our Evidence

Act:

"As applied to judicial proceedings the phrase 'burden of proof' has two distinct and frequently confused meanings:

(1) the burden of proof as a matter of law and pleading-the burden, as it has been called, of establishing a case, whether by preponderance of evidence, or beyond a reasonable doubt; and (2) the burden of proof in the sense of adducing evi- dence."

It is then explained:

"The burden of proof, in this sense, rests upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of the issue. 'It is an ancient' rule rounded on considerations of good sense, and it should not be departed from without strong reasons'. It is fixed at the begin- ning of the trial by the state of the pleadings, and it is settled as a question of law, remaining unchanged throughout the trial exactly where the pleadings place it, and never 'shifting in any circumstances whatever. If, when all the evidence, by whomsoever introduced, is in, the party who has this burden not discharged it, the decision must be against him".

The application of rules relating to burden of proof in various types of cases is thus elaborat- ed and illustrated in Phipson by reference to decided cases (see p. 40, para 93):

"In deciding which party asserts the affiramative, regard must of course be had to the substance of the issue and not merely to its grammatical form, which latter the pleader can frequently vary at will, moreover a negative alle- gation must not be confounded with the mere tra- verse of an affirmative one. The true meaning of the rule is that where a given allegation, whether affirmative or negative, forms an essential part of a party's case, the proof of such allegation rests on him; e.g. in an action against a tenant for not repairing according to covenant, or against a horse-dealer that a horse sold with a warranty is unsound, proof of these allegations is on the plaintiff, so in actions of malicious prosecution, it is upon him to show not only that the defendant prosecuted him unsuccessfully, but also the absence of reasonable and probable cause: while in actions or false imprisonment, proof of the existence of reasonable cause is upon the defendant, since arrest unlike prosecution, in prima facie a tort and demands justification. In bailment cases, the bailee must prove that the goods were lost without his fault. Under the Courts (Emergency Powers) Act 1939, the burden of proving that the defendant was unable immediately to satisfy the judgment and that inability arose from circumstances attributa- ble to the war rested on the defendant. But it would seem that in an election petition alleging breaches of rules made under the Representation of the People Act, 1949, the Court will look at the evidence as a whole, and that even if breaches are proved by the petitioner, the burden of showing that the elec- tion was conducted substantially in accordance with the. law does not rest upon the respondent. Where a corporation does an act under'statutory powers which do not prescribe the method, and that act invades the rights of others, the burden is on the corporation to show that there was no other practi- cal way of carrying out the power which would have that effect".

Turning now to the provisions of our own Evi- dence Act, we find the general or stable burden of proving a case stated in section 101 as follows:

"101. Whoever desires any Court to give judgment as to any legal right or liability depend- ent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person".

The principle is stated in section 102 from the point of view of what has been sometimes called the burden of leading or introducing evidence which is placed on the party initiating a proceeding. It says:

"102. The burden of proof in a suit or pro- ceeding lies on that person who would fail if no evidence at all were given on either side". In practice, this lesser burden is discharged by merely showing that there is evidence in the case which supports the case set up by the party which comes to Court first, irrespective of the side which has led that evidence. An outright dismissal in limine of a suit or proceeding for want of evidence is thus often avoided. But, the burden of establishing or general burden of proof is heavier. Sometimes, evidence coming from the side of the respondents, in the form of either their admissions or conduct or failure to controvert, may strengthen or tend to support a petitioner's or plaintiff's case so much that the heavier burden of proving or establishing a case, as distinguished from the mere duty of introducing or showing the existence of some evidence on record stated in section 102, is itself discharged. Sufficiency of evidence to discharge the onus probandi is not, apart from instances of blatant perversity in assessing evi- dence, examined by this Court as a rule in appeals by special leave granted under Article 136 of the Constitution. It has been held that the question whether an onus probandi has been discharged is one of fact (see: AIR 1930 P.C. p. 90). It is gener- ally so.

"Proof", which is the effect of evidence led, is defined by the provisions of section 3 of the Evidence Act. The effect of evidence has to be distinguished from the duty Or burden of showing to the Court what conclusions it should reach. This duty is called the "onus probandi", which is placed upon one of the parties, in accordance with appropriate provisions of law applicable to various situations, but, the effect of the evidence led is a matter of inference or a conclusion to be arrived at by the Court.

The total effect of evidence is determined at the end of a proceeding not merely by considering the general duties imposed by sections 101 and 102 of the Evidence Act but also the special or particular ones imposed by other provisions such as sections 103 and 106 of the Evidence Act. Section 103 enacts: "103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person".

And, section 106 lays down:

"106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him".

In judging whether a general or a particular or special onus has been discharged, the Court will not only consider the direct effect of the oral and documentary evidence led but also what-may be indirectly inferred because. certain facts have been proved or not proved though easily capable of proof if they existed at all which raise either a pre- sumption of law or of fact. Section 114 of the Evidence Act covers a wide range of presumptions of fact which can be used by Courts inthe course of. administration of justice to remove lacunae in the chain of direct evidence before iL It is, therefore, said that the function of a presumption often is to "fill a gap" in evidence.

True presumptions, whether of law or of fact, are always rebuttable. In other words, the party against which a presumption may operate can and must lead evidence to show why the presumption should not be given effect to. If, for example, the. party which initiates a proceeding or comes with a case to Court offers no evidence to support it, the presumption is that such evidence does not exist. And, if some evidence is shewn to exist on a question in issue, but the party which has it within its power to produce it, does not, despite notice to it to do so,. produce it, the natural presumption is that it would, if produced, have gone against it. Similarly, a presumption arises from failure to discharge a special or particular onus.

The result of a trial or proceeding is determined by a weighing of the totality of facts and circumstances and presumptions operating in favour of one party as against those which may tilt the, balance in favour of another. Such weighment always takes place at the end of a trial or proceeding which cannot, for purposes of this final weighment, be split up into disjointed and disconnected parts simply because the requirements of procedural regularity and logic, embodied in procedural law, prescribe a sequence, a stage, and a mode of proof for each party tendering its evidence. What is weighed at the end is one totality against another and not selected bits or scraps of evidence against each other. Coming back to the cases before us, we find that the High Court had correctly stated the grounds on which even a subjective opinion as to the existence of the need to take action under section 17(4) of the Act can be challenged on certain limited grounds. But, as soon as we speak of a challenge we have to bear in mind the general burdens laid down by sections 101 and 102 of the Evidence Act. It is for the petitioner to substantiate the grounds of his challenge. This means that the petitioner has to either lead evidence or show that some evidence has come from the side of the respondents to indicate that his challenge to a notification or order is made good. If he does not succeed in discharging that duty his petition will fail. But, is that the position in the cases before us ? We find that, although the High Court had stated the ques- tion before it to be one which "narrows down to the point as to the burden of proof", yet, it had analysed the evi- dence sufficiently before it to reach the conclusion that the urgency provision under section 17(4) had not been validly resorted to.

The High Court had remarked that the public purpose itself was vaguely stated, although it could not, in its opinion, be challenged on that ground. As we have already indicated, the purpose was sufficiently specified to be, prima facie, a legally valid purpose. We do not think that the vagueness of the purpose, as stated in the notification under section 4 (1), really affected the judgment of t, he

High Court so much as the absence of facts and circumstances which could possibly indicate that this purpose had neces- sarily to be carried out in such a way as to exclude the application of section 5A of the Act. The High Court had rightly referred to the absence of any statement of circum- stances which could have resulted in such urgency that no enquiry under section 5A of the Act could reasonably be held.

The High Court had relied on the following passage from Barium Chemicals Ltd. v. Company Law Board(1):

" ..... An action, not based on circumstances suggesting an inference of the; enumerated kind will not be valid. In other words, the enumeration of the inferences which may be drawn from the circumstances, postulates the absence of a general discretion to go on a fishing expedi- tion to find evidence. No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demon- strable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contem- plated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out ....

Since the existence of circumstances' is a condition funda- mental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances (1) A.I.R. 1967, S.C. 295 to 309.

exist and give no clue to what they are because the circum- stances must be such as lead to conclusions of certain definiteness".

The High Court also cited the following passage from the judgment of Spens, CJ., in King Emperor v. Sibnath Banerjee(1), which was relied upon on behalf of the State to contend that it was the duty of the petitioners to remove the effect of a recital in an order showing that conditions precedent to the exercise of a power had been fulfilled:

"It is quite a different thing to question the accuracy of a recital contained in a duly authenticated order, particularly where that recit- al purports to state as a fact the carrying out of what I regard as a condition necessary to the valid making of that order. In the normal case, the existence of such a recital in a duly authenticated order will, in the absence of any evidence as to. its inaccuracy be accepted by a Court as establish- ing that the necessary condition was fulfilled. The presence of the recital in the order will place a difficult burden on the detenu to produce admissi- ble evidence sufficient to establish even a prima facie case that the recital is not accurate. If, however, in any case, a detenu can produce admis- sible evidence to that effect, in my judgment the mere existence of the recital in the order cannot prevent the court considering such evidence and, if it thinks fit, coming to a conclusion that the recital is inaccurate".

The High Court opined that the presumption of regularity, attached to an order containing a technically correct recit- al, did not operate in cases in which section 106 Evidence Act was applicable as it was to the cases before us. We do not think that we can lay down such a broad

general propo- sition. An order or notification, containing a recital, technically correct on the face of it, raises a presumption of fact under section 114 illustration (e) of the Evidence Act. The well known maxim of law on which the presumption, found is illustration (e) to section 114 of Evidence Act is: "Omain prae sumunt ur rite esse acta" (i.e. all acts are presumed to have been rightly and regularly done). This presumption, however, is one of fact. It is an optional presumption. It can be displaced by circumstances indicat- ing that the power lodged in an authority or official has not been exercised in accordance with the law. We think that the original or stable onus land down by section 101 and section 102 of the Evidence Act can not be shifted by the use of section 106 of the Evidence Act, although the particular onus of proving facts and circumstances lying especially within the knowledge of the official who formed the opinion which resulted in the notification under sec- tion 17(4) of the Act rests upon that official. The recit- al, if it is not defective, may obviate the need to look further. But, there may be circumstances in the case which impel the Court to look beyond it. And, at that stage, section 106 Evidence Act can be invoked by the party assail- ing an order or notification. It is most unsafe in such cases for the official or authority concerned to rest content with non-disclosure of facts especially with (1)[1944] E.C.R 1 at 42.

in his or its knowledge by relying on the sufficiency of a recital. Such an attitude may itself,justify Further judi- cial scrutiny.

In Sibnath Banerjee's case (supra) also, facts which led an authority to pass a detention order could be said to lie especially within its knowledge. If there could be certain facts, in Sibnath Banerjee's ease (supra), winch Sibnath Banerjee as well as the official making the order kneW, it could, similarly, be urged that, in the cases before us some facts could be known to both sides. We do not think that the principle laid down in Sibnath Banerjee's case (supra) can be circumvented by merely citing section 106 of the Evidence Act as the High Court did. We think that the total- ity of circumstances has to be examined, including the recitals, to determine whether and to what extent each side had discharged its general or particular onus. It has been repeatedly laid down that the doctrine of onus of proof becomes unimportant when there is sufficient evidence before the Court to enable it to reach a particular conclusion. The principle of onus of proof' becomes important in cases of either paucity of evidence or in cases where evidence given by two sides is so equivalanced that the Court is unable to hold where the truth lay.

In the cases before us, if the total evidence, from whichever side any of it may have come, was insufficient to enable the petitioners to discharge their general or stable onus, their petitions could not succeed. On the other hand, if, in addition to the bare assertions made by the petition- ers, that the urgency contemplated by section 17(4) did not exist, there were other facts and circumstances, including the failure of the State to indicate facts and' circum- stances which it could have easily disclosed if they exist- ed, the petitioners could be held to have discharged their general onus.

We think that the ,matter, is not so simple as to capa- ble of decision on an examination of a mere recital in the order or notification as was, urged on behalf of the State of Maharashtra. Indeed, even if a recital in a notifica- tion is defective or does not contain the necessary state- ment that the required conditions have been fulfilled, evidence can be led to show that conditions precedent to the exercise of a power' have been actually fulfilled. This was clearly laid down by this Court in Swadeshi

Cotton Mill's case (supra), where Wanchoo, J. speaking for the Constitution Bench of this Court said:

"The difference between a case where a gener- al order contains a recital on the face of it and one where it does not contain such a recital is that in the latter case the burden is thrown on the authority making the order to satisfy the Court by other means that the conditions precedent were fulfilled, but in the former case the Court will presume the regularity of the order including the fulfilment of the conditions precedent and then it will be for the party challenging the legality of the order to show that the recital was not correct and that the conditions precedent were not in fact complied with by the authority: (see the observa- tions of Spens C.J. in King Emperor v. Sibnath Banerjee(1) which were approved by the Privy Coun- cil in King Emperor v. Sibnath Banerjee"(2). This Court also said there:

"Our conclusion therefore is that where certain conditions precedent have to be satisfied before a subordinate authority can pass an order, (be it executive or of the character of subordi- nate legislation), it is not necessary that the satisfaction of those conditions must be recited in the order itself, unless the statute requires it, though, as we have already remarked, it is most desirable that it should be so, for in that case the presumption that the conditions were satisfied would immediately' arise and burden would be thrown on the person challenging the fact of satis- faction to show that what is recited: is not cor- rect. But even where the recital is not there on the face of the order, the order will not become illegal ab initio and only a further burden is thrown on the: authority passing the order to satisfy the Court by other means that the condi- tions precedent were complied with. In the present case this has been done by the filing of an affidavit before us."

It is also clear that, even a technically correct recit- al in an order or notification stating that the conditions precedent to the exercise of a power have been fulfilled may not debar the Court in a given case from considering the question whether, in fact, those conditions have been ful- filled. And, a fortiori, the Court may consider ,red decide whether the authority concerned has applied its mind to really relevant facts. of a case with a view to determining that a condition precedent to the exercise of a power has been fulfilled. If it appears, upon an examination of the totality of facts in the case, that the power conferred has been exercised for an extraneous or irrelevant purpose or that the mind has not been applied at all to the real object or purpose of a power, so that the result is that the exer- cise of power could only serve some other or collateral object, the Court will interfere.

In Raja Anand Brahma Shah v. State of U.P. & Ors.,(3) a Constitution bench of this Court held:

"It is true that the opinion of the State Government which is a condition for the exercise of the power under s. l 7(4) of the Act, is subjec- tive and a Court cannot normally enquire whether there were sufficient grounds or justification for the opinion formed by the State Government under s. 17(4). The legal position has been explained by the Judicial Committee in King Emperor v. Shibnath Banerjee (72 [1944]F.C.R. 1,42. (2)[1945]F.C.R, 195,216-

17. [1967]1 S.C.R. 373 at .381.

234SC1/76 I.A. 241) and by this Court in a recent case--Jaichand Lal Sethia v. State of West Bengal & Ors. (Criminal Appeal No. 110 of 1968-decided on July, 1966 [1966] Suppl. S.C.R.)But even though the power of the State Government has been formulated under s. 17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a Court of Law if it, could be shown that the State Government never applied its mind to the. matter or that the action of the State Government is malafide If therefore in a case the land under acquisition is not actual- ly waste or arable land but the State Government has formed the opinion that the provisions of sub- s.(1) of s. 17 are applicable the Court may legiti- mately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue. It follows therefore that the notification, of the State Government under s. 17(4) of the Act directing that the provisions of s. 5A shall not apply to the land is ultra vires". In Brahma Shah's case (supra), a condition precedent to the application of section 17(4) was held to be unsatisfied inasmuch as the land in respect of which the proceeding was taken was found to be forest land which could not be classified as "arable or waste land".

Learned counsel for the State relied strongly on the judgment of this Court in I. G. joshi Etc. v. State of Gujarat & Anr. (1) where this Court had pointed out how, in Sibnath Banerjee's case (supra), the initial burden of the petitioner, arising from a prima facie correct order had been repelled by an affidavit filed by Mr. Porter, Additional Home Secretary on behalf of the State, showing that the mind 'of the authority concerned had not been independently applied to the require- ments of law but a routine order had apparently been passed on materials supplied by the Police. We have carefully considered the following observa- tions made by this Court in I. G. Joshi's case (supra) after noticing facts of Sibnath Baner- jee's case (supra) (at p. 278):

"The High Court, having before it allega- tions, counter allegations, and denials, dealt first with the legal side of the matter. Then it readily accepted the affidavits on the side of Government. If it had reversed its approach it need not have embarked upon (what was perhaps unnecessary) an analysis of the many principles on which onus is distributed between rival parties and the tests on which subjective opinion as distin- guished from an opinion as to the existence of a fact, is held open to review in a court of law. As stated already there is a strong presumption of regularity of official acts and added thereto is the

(l) [1968]2 S.C.R. 267.

prohibition contained in Art. 166(2). Govt. was not called upon to answer the kind of affidavit which was filed with the petition because bare denial that Govt. had not formed an opinion could not raise an issue. Even if Govt. under advice offered to disclose how the matter was dealt with, the issue did not change and it was only this. Whether any one at all formed an opinion and if he.did whether he had the necessary authority to do so. The High Court having accepted the affidavits that Raval and Jayaraman had formed the necessary opinion, was only required to see if they had the competence. The High Court after dealing with many matters held that they had".

In I. G. Joshi's case (supra), it appears to us that the principal -round of attack on a notification, was that it was not duly authenticated in accordance with the require- ments of Article 166 and the Rules' of Business. The notification was held not to have been vitiated on the grounds on which it had been assailed. It was observed that the High Court, after considering the evidence, was satisfied, on the evidence produced before it, that the required opinion had been formed even though it was not necessary for the Government in view of the presumption of regularity attached to official acts. to produce anything more than the notification. We do not find that any of the matters placed before us' now was in issue there. On the other hand, this. Court held, on that occasion, that the mere assertion of the petitioner that the Government had not formed an opinion about the need for action under section 17(4) of the Act "could not raise an issue". We do not think that we need express any opinion here on the question whether such an assertion can or cannot even raise a triable issue. All we need say is that a triable issue did arise and was decided by the High Court in the cases now before us. This issue was whether the conditions precedent to exercise of power under section 17(4) had been fulfilled or not. We think that such a question can only be decided rightly after determining what was the nature of compliance with the conditions of section 17(4) required by the Act. We think that section 17(4) cannot be read in isolation from sections 4(1) and 5A of the Act. The immediate purpose of a notification under section 4(1) of the Act is to enable those who may have any objections to make to lodge them for purposes of an enquiry under section 5A of the Act. It is true that, although only 30 days from the notification under section 4(1) are given for the filing of these objec- tions under section 5A of the Act, yet, sometimes the pro- ceedings under section 5A are unduly prolonged. But, considering the nature of the objections which are capable of being successfully taken under section 5A, it is diffi- cult to see why the summary enquiry should not be concluded quite expeditiously. In View of the authorities of this Court, the existence of what are prima facie public pur- poses, such as the one present in the cases before us, cannot be successfully challenged at all by objectors. It is rare to find a case in which. objections to the validity of a public purpose of an acquisition can even be stated in a form in which the challenge could succeed. Indeed, questions relating to validity of the notification on the ground of malafides do not seem to US to be ordinari- ly open in a summary enquiry under section 5A of the Act. Hence, there seems to us to be little difficulty in completing enquiries contemplated by section 5A of the Act very expeditiously.

Now, the purpose of section 17(4) of the Act is, obvi- ously, not merely to confine action under it to. waste and arable land but ,also to situations in which an inquiry under section 5A will serve no useful purpose, or, for some overriding reason, it should be dispensed with. The mind of the Officer or authority concerned has to be applied to the question whether there is fan urgency of such a nature that even the summary proceedings under section 5A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under section 5A which has to be considered.

Section 17(2) deals with a case in which an enquiry under section 5A of 'the Act could not possibly serve any useful purpose. Sudden change of the course of a river would leave no option if essential communications have to be maintained. It results in more or less indicating, by an operation of natural physical forces beyond human control, what land should be urgently taken possession of. Hence, it offers no difficulty in applying section 17(4) in public interest. And, the particulars of'. what is .obviously to be done in public interest need not be concealed when its validity is questioned

in a Court of justice. Other cases may raise questions involving consideration of facts which are especially within the knowledge of the authorities concerned. And, if they do not discharge their special burden, imposed by section 106 Evidence Act, without even disclosing a sufficient reason for their abstention from disclosure, they have to take the consequences which flow from the non-production of the best evidence which could be produced on behalf of the State if its stand was correct. In the case before us, the public purpose indicated is the development of an area for industrial and residential pur- poses. .This in itself, on the face of it, does not call for any such action, barring exceptional circumstances, as to make immediate possession, without holding even a summary enquiry under section 5A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries under section 5A of the Act to be completed without any impediment whatso- ever to the execution of the scheme. Therefore, the very statement of the public purpose for which .the land was to be 'acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry under 'section 5A of the Act.

Again, the uniform and set recital of a formula, like a ritual or mantara, apparently applied mechanically to every case, itself indicated that the mind of the Commissioner concerned was only applied to the question whether the land was waste or arable and whether its acquisition is urgently needed. Nothing beyond that seems to have been considered. The recital itself shows that the mind of the Commissioner was not applied at all to the question whether the urgency is of such a nature as to require elimination of the enquiry under section 5A.of the Act. If it was, at least the notifications gave no inkling of it at all. On the other hand, its literal mean- ing was that nothing beyond matters stated there were con- sidered.

All schemes relating to development of industrial and residential areas must be urgent in the context of the country's need for increased production and more residential accommodation. Yet, the very nature of such schemes of development does not appear to demand such emergent action as to eliminate summary enquires under section 5A of the Act. There is no indication whatsoever in the affidavit filed on behalf of the State that the mind of the Commis- sioner was applied. at all to the question whether it was a case necessitating the elimination of the enquiry under section 5A of the Act. The recitals in the notifications, on the other hand, indicate that elimination of the enquiry under section 5A of the Act was treated as an automatic consequence of the opinion formed on other matters. The recital does not say at all that any opinion was formed on the need to dispense with the enquiry under section 5A of the Act. It is certainly a case in which' the recital was atleast defective. The burden, therefore, rested upon the State to remove the defect, if possible, by evidence to show that some exceptional circumstances which necessitated the elimination of an enquiry under section 5A of the Act and that the mind of the Commissioner was applied to this essen- tial question. It seems to us that the High Court correctly applied the provisions of section '106 of the Evidence Act to place the burden upon the State to prove those special circumstances. although it also; appears to us. that the High Court was not quite correct in stating its view in such a manner as to make it appear that some part of the initial burden of the petitioners under sections 101 and 102 of the Evidence Act had been displaced by the failure of the State, to discharge its duty under' section 106 of the Act. The correct way of putting it would have been to say that the failure of the State to produce the evidence of facts espe- cially' within the knowledge of its officials, which rested upon it

under section 106 of the Evidence Act, taken together with the attendant facts gnu circumstances, includ- ing the contents of recitals, had enabled the petitioners to discharge their burdens under sections 101 and 102 of the Evidence Act.

We may also observe that if, instead of prolonging litigation by appealing to this Court, the State Government had ordered expeditious enquiries under section 5A of the Act or even afforded the petitioners some opportunity of being heard before acting under section 17(4) of the Act, asking them to show cause why no enquiry under section 5A of the Act should take place at all, the acquisition proceed- ings need not have been held up so long. In fact, we hope that the acquisition proceedings have not actually been held up.

On the view we take of the cases before us, we find no force in either the appeals by the owners of land or in those preferred by the State of Maharashtra. Consequently, we dismiss all the nine appeals before us. The parties will bear their own costs.

P.B.R. Appeals dismissed.