Supreme Court of India
West Bengal Housing Board Etc vs Brijendra Prasad Gupta & Ors. Etc on 9 July, 1997
Author: D P Wadhwa
Bench: K. Ramaswamy, D.P. Wadhwa

PETITIONER:
WEST BENGAL HOUSING BOARD ETC.

Vs.

RESPONDENT:
BRIJENDRA PRASAD GUPTA & ORS. ETC.

DATE OF JUDGMENT: 09/07/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T D. P. Wadhwa, J.

Special leave granted.

These appeals are directed against the judgment dated 27th 29 March, 1996 of the Division Bench of the Calcutta High Court setting aside the requisition and subsequent acquisition of the certain piece of land under the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948 (PDS short `the Act') as amended from time to time. The impugned judgment proceeded on the basis (1) that there was no proper service of notice as required under Section 3 of the Act and that (2) there was no public purpose in requisitioning the land.

Subject matter of the land comprise in plot Nos. 444, 445 and 446 under Khatian Nos. 343, 256 and 135 respectively in all measuring 1.82 acres in Mouza Mandalganthi within the limits of Rajarhat Police Station, Rajarhat Municipality in the district of 24 Parganas (North), West Bengal. This land belonged to one Chandra Kala Parasrampuria and Ranjana Kaushal and was recorded in their names in the revenue Record of Rights. Respondents 1 and 6 to 18 (for short the writ petitioners') purchased this land in the year 1988 and on or about February 15, 1990 they applied for mutation of the land in their names. Even after purchase of the land they had paid rent of the land in the name

of Chandra Kala Parasrampuria and others, the original owners and were granted receipts in the names of the original owners. It is stated that it was on September 7, 1995 that a certificate of mutation had been issued by the prescribed authority under Section 50 of the West Bengal Land Reforms Act in favour of the writ petitioners. Their names also appeared in the revised settlement record where after they paid rent. We are mentioning this fact as it was contended that the application of the writ petitioners for mutation was ultimately allowed. The writ petition in the High Court itself came to be filed on March 27, 1995.

Before we examine as to how the land came to be requisitioned and then acquired under provisions of the Act, we may set out the relevant provisions of law. Sections 3 and 4 of the Act read as under:

> "Power to requisition :- (1) If the State Government is of the opinion that it is necessary so to do for maintaining supplies and services essential to the life of the community (or for increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas) or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other areas excluded by the State Government by a notification in this behalf, by the construction or reconstruction of dwelling places in such areas (or for purposes connected therewith or incidental thereto), the State Government may, by order in writing, requisition any land and may make such further orders as appears to it to be necessary or expedient in connection with the requisitioning:
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> Provided that no land used for purpose of religious worship or used by an educational or charitable institution shall be requisitioned under this section, (1A) A Collector of a district, (an Additional District Magistrate or the First Land Acquisition Collector, Calcutta) when authorised by the State Government in this behalf, may exercise within his jurisdiction the powers conferred by sub-section (1). (2) An order under sub-section (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation (of an occupier, not being the owner of the land, also on such occupied), (3) If any person fails to comply with an order made under sub- section (1) the Collector or any person authorised by him in writing in this behalf shall execute the order in such manner as he considers expedient and may, -
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> (a) if he is a Magistrate, enforce the delivery of possession of the land in respect of which the order has been made to himself, or
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> (b) if he is not a Magistrate, apply to a Magistrate or, in Calcutta as defined in clause (11) of Section 5 of the Calcutta Municipal Act, 1951, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the delivery of possession of such land to him."
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> "4. Acquisition of land - (1) Where any land has been requisitioned under Section 3, the State Government may use or deal with such land for any of the purpose referred

to in sub-section (1) of Section 3 as may appear to it to be expedient.

(1a) The State Government may acquire any land requisitioned under Section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub-section (1) of Section 3.

(2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the (State Government free from all incumbrances and the period of requisition of such land shall end."

Rule 3 of the West Bengal Land (Requisition & Acquisition Rules, 1948 deals with manner of service of orders and is an under:

"3. Manner of Service of Orders - An order under sub-section (1) or section 3 shall be served on the owner of the land and where the order relates to land in occupation of an occupier not being the owner of the land, also on such occupier.

(a) by delivering or tendering a copy thereof, endorsed either by the person authorised by the Act to make the order or by the Collector, to the person on whom the order is to be served or his agent, or

(b) by fixing a copy thereof on the outer door of some conclusions part of the house in which the person on whom the order is to be served ordinarily resides or carriers on business or personally works for gain, or

(c) by sending the same to the person on whom the order is to be served by registered post with acknowledgement due, or

(d) by fixing a copy thereof in some conscious part of the land to which the order relates and also in some conspicuous place of the office of the Collector."

When the writ petitioner was filed a learned single Judge of the High Court directed maintenance of status quo. By subsequent order it appears the interim order in terms of prayer (d) of the writ petition was passed. An appeal was filed against that order before the Division Bench which directed that "construction in question need not be stopped and may be proceeded with subject to the decision of this application without prejudice to the rights and contentions of the parties in this application". When again matter was placed before the Division Bench, counsel for the parties agreed that keeping in view the urgency of the matter the entire writ applications be heard. As noted above, these writ petitions were allowed by the Division Bench by the judgment dated 27/29th March, 1996. Impugned notice requisitioning the land was quashed and direction was issued to the State authorities to hand over vacant possession of the land to the writ petitioners. West Bengal Housing Board, State of West Bengal and others and Bengal Peerless Housing Development Company Ltd. have filed separate appeals before this Court.

Admittedly names of the writ petitioners were not recorded in the Record of Rights by the prescribed authority under Section 50 of the WB Land Reforms Act though the purchase of the land was made by the petitioners in 1988. They had applied for mutation of the land in their names on February 15, 1990 and certificate of mutation was granted by the prescribed authority on September 7, 1995 much after when the land had been acquired under Section 4 of the Act. However, the Division Bench in the impugned judgment held that even though the names of the writ petitioners had not been recorded in the Record of Rights, they were nevertheless entitled to notice under Section 3(2) of the Act, as by virtue of their purchasing the land from the original owners they were owners of the land and thus entitled to notice. It was observed that the expression "owner" occurring in the said section must be given the meaning in which it is understood in common parlance and that there was no warrant for importing the provisions of the WB Land Reforms Act in construing the said expression. The Division Bench also observed that it was incumbent upon the authorities to make inquiries in order to ascertain who were the owners and that the authorities must be deemed to have constructive notice of the ownership of land by the writ petitioners by reason of registration of their respective sale deeds. It was thus held that non-service of such notice on the writ petitioners rendered the whole requisition order bad in law. The Division Bench further held that the purpose for which the requisition had been made, was not a public purpose within the meaning of the Act and that the circumstances of the case did not justify the invocation of the provisions of the Act which was intended for a special purpose and the exercise by the authorities of the powers under the Act was in fact a colourable exercise or power. The Bench further held that the Act did not even provide for the application of the principles of natural justice and its provisions being of drastic measure, had to be strictly complied which the authorities failed to do so.

The principal question that arises for consideration is if it were the writ petitioners who were entitled to notice under Section 3(2) of the Act or that this provision stood complied by serving notice on the recorded owners of land in the Record of Rights maintained under Section 50 of the WB Land Reforms Act. We are of the view that the provisions of service of notice stood complied when notices were served on the persons recorded as owners in the Record of Rights maintained under Section 50 of the WB Land Reforms Act. We are of the view that the provisions of service of notice stood complied when notices were served on the persons recorded as owners in the Record of Rights. Record of Rights is a statutory document maintained by the prescribed authority under Section 50 of the Act and it is a notice to the public at large as to who are the owners of the land in the records of the authorities. That would be the reason as to why writ petitioners themselves applied for mutation of the lands in their names in the year 1990 when in fact they had purchased the same in 1988. Under Section 3 of the West Bengal Land Reforms Act, 1955, the Act overrides other laws if there is anything inconsistent with what is stated in the Act. Section 50 of the Act provides for maintenance of the record-of-rights by the prescribed authority by incorporating therein the changes on account of mutation of names as a result of transfer or inheritance or partition, exchange etc. Under sub-section (9) of Section 51A every entry in the record-of-rights shall be presumed to be correct, until it is proved that the entry in the record-of- right is incorrect, proceedings for that, however, will have to be initiated under the Act itself, Otherwise there s every presumption about the correctness of the record-of- rights. As noted above mutation was effected in September 1995. The Division Bench has observed that the Collector would have been aware of the pendency of the applications of the writ petitioners for mutation of lands in their names when the

same were pending in his office. The Bench in effect observed that it was a case where the right hand did not know what the left hand was doing. This observation sounds goods, but knowing the working of the Government offices it appears to have no place. Of course, the Collector could have asked for a report from the prescribed authority concerned if any application for mutation of the land was pending with him. But that would be expecting too much from the Collector. It is no part of the duty of the Collector to make a roving inquiry into ownership of the persons. We are of the opinion the requirements of the law were met when notices were served upon the recorded owners as per Record of Rights. Again we do not think in a case like the present one, it is for the Collector to make enquiries from registration office to find out if the land had since been sold by the recorded owners. In Winky Dilawari (Smt.) and another vs. Amritsar Improvement Trust, Amritsar (1996 11 SCC 644) (infra) this Court observed that the public authorities were not expected to go on making enquiries in the Sub-Registrar's office as to who would be the owner of the property. The Collector in the present case was thus justified in relying on the official record being the Record of Rights as to who were owners of the land sought to be requisitioned and prudence did not require any further enquiry to be made. We are therefore of the view that notices were properly served under Section 3(2) of the Act on the owners of the land.

Before we further examine the rival contentions, we may have a look as to how the land was requisitioned on April 2, 1992, acquired on July 22, 1994, transferred to the Housing Board on December 8, 1994 and finally placed at the disposal of the Bengal Peerless Development Company Ltd. If we refer to the object of the Act, it will be see that it was enacted to provide for the requisition and speedy acquisition of land for certain purposes. It says:

> "Whereas it is expedient to provide for the requisition and speedy acquisition of land for purposes of maintaining supplies and services essential to the life of the community, increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas, providing proper facilities for transport, communication, irrigation or drainage and creating better living condition sin urban or rural areas by the construction or reconstruction of dwelling places in such areas or for purposes connected therewith and incidental thereto:"

With reference to the object with which the Act was enacted we may now refer to the order under Section 3(1) of the Act requisition the land. This can be extracted from that order and it is as under:

> "Whereas in my opinion it is necessary for the purpose of construction of Housing Complex by Housing Development Govt. of WB (Reg. Branch) maintaining supplies and services essential to the life of the community providing proper facilities for transport/communication/irrigation/ drainage, viz. for the purpose of better living condition in rural or urban areas by construction or reconstruction of dwelling places to requisition the land(s) described in the schedule below/overleaf."

We may also note that the Act was a temporary measure and its validity had been extended from time to time. The Amending Act, 1994 came into force on March 31, 1994, by which the validity of

the Act was extended till March 31, 1997 but the power of requisition of land under Section 3 of the Act had been omitted with effect from April 1, 1994. It was however provided that such omission would not affect the previous operation of the said section or anything duly done thereunder and any reference to the said section in any other provisions of the principal Act should be construed as if the said section had not been omitted. The Act was further amended on October 8, 1996 by providing certain procedure for warding compensation etc. In any event these two amendments would have no application in the present case inasmuch as the notice of requisition under Section 3(1) of the Act was issued on April 2, 1992 and gazette notification for requisition of the land was published on July 22, 1994.

It is submitted that the West Bengal Housing Board Act (for short `the Housing Board Act') was enacted on October 13, 1972 with a view to solve the acute problem of shortage of housing, which called for greater and quicker attention, Mr. Gupta, learned senior counsel appearing for the Housing Board submitted that it had not been possible for the State to make the desired expeditious progress in regard to the construction of houses because of inadequate resources and also because of the prevailing rules and procedures which was a time consuming process. He said the Housing Board was in a better position to undertake housing and allied projects on a much larger scale and would be able to secure adequate funds by raising market loans or by obtaining institutional finance, which a Government Department could not do.

Again it would appear the Housing Board was also unable to meet the challenge of constructing more houses to alleviate the sufferings of the people both in urban and rural areas. In 1993 the West Bengal Housing Board Act was amended and the concept of joint venture with private sector was brought in. It will be instructive to refer to the Statement of Objects and Reasons which led to introduction of the West Bengal Housing Board (Amendment) Bill, 1993. It is as under:

> "1. It has been under the consideration of the State Government for some time past to embark on joint venture to promote housing activities on a large scale for different categories of people having different quantums of income and particularly for Low Income Group and Middle Income Group people and to develop lands for distribution to the general public for the purpose of building dwelling houses thereon. To tackle the problem of hopelessness even in a modest way, it is, however, necessary to build at least 50,000 dwelling units in urban areas during the next five years. The Housing Department and the West Bengal Housing Board are, of course, doing their best within the existing framework to make the optimum utilisation of their organisational capacity to build the dwelling units as aforesaid. But the dimension of the problem is so large that it is not possible for the Housing Department and the West Bengal Housing Board to achieve the target on their own.
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> 2. In the circumstances as stated above and after a careful considering of the matter, it has ben decided to constitute, in the public interest, joint sector company or companies for being entrusted with housing schemes for expeditious execution.

> 3. It has also been decided that the dues of the West Bengal Housing Board from any individual, firm, company or association or body of individuals, whether incorporated or not, should be recovered as an appears of land revenue in the manner provided in the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913).
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> 4. The Bill has been framed with the above objects in view."

Under sub-section (12A) of Section 2 of the Amending Act "new joint sector company" means a joint sector company formed and registered on or after the date of coming into force of the Amending Act, 1993. Under Section 27A power has been conferred on the Housing Board constituted under the Act to entrust existing of new joint sector company with housing schemes. This section 27A is as under:

> "27A. Power to entrust existing, of new, joint sector company with housing scheme. -- Notwithstanding anything contained in this Act, the Board may, if it considers PDS necessary so to do in the public interest and is s satisfied that an existing, or new, joint sector company is willing to comply, or has complied. with such terms and conditions as the State Government may think fit to impose, entrust, with the previous approval of the State Government, any existing, or new, joint sector company with any housing scheme for execution, and different existing, or new, joint sector companies may be so entrusted with different housing scheme for execution."

It may be noted that under the Housing Board Act, Housing Board (or Board) has been constituted which is a body corporate having perpetual succession and a common seal and may sue and be used in the corporate name and shall be competent to acquire and hold property both movable and immovable, enter into contract and do all thing necessary for the purposes of this Act. Under Section 17 of the Housing Board Act powers and duties of Board to undertake housing scheme have been prescribed. Section 17, in so far as it is relevant, is as under:

> "27A. Power to entrust existing or new, joint sector company with housing scheme." Notwithstanding anything contained in this Act, the Board may, if it considers at necessary so to do in the public interest and is satisfied that an existing, or new, joint sector company is willing to comply, or has compiled, with such terms and conditions as the State Government may think fit to impose, entrust, with the previous approval of the State Government, any housing scheme for execution, and different existing, or new, joint sector companies may be so entrusted with different housing schemes for execution."

It may be noted that under the Housing Board Act, Housing Board (or Board) has been constituted which is a body corporate having perpetual succession and a common seal and may sue and be sued in the corporate name and shall be competent to acquire and hold property both movable and immovable, enter into contract and do all things necessary for the purposes of this Act. Under Section 17 of the Housing Board Act powers and duties of Board to undertake housing schemes have

been prescribed. Section 17. in so far as it is relevant, is as under ;

> "17. Powers and duties of Board to undertake housing schemes, (1) Subject to the provisions of this Act. the Board may, from time to time. incur expending and undertake works for the framing and execution of such housing schemes as it may consider necessary and such housing schemes may include housing schemes in relation to lands and building vested in or in the possession of the State Government.
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> (2) The State Government may, on such terms and conditions as it may think fit to impose entrust to the Board the framing and execution of whether provided for by this Act or not and the Board shall thereupon undertake the framing and execution of such scheme."

Section 18 specifies the matters which a housing scheme may provide.

On September 13. 1993 a Memorandum of Understanding was drawn up between the Housing Board and the Peerless General Finance & Investment Co. Ltd., a public limited company under the Companies Act, 1956 to promote a joint sector company and in accordance thereto the Bengal Peerless Housing Development Company Limited was incorporated as the existing joint sector company with 49.5% share-holding by each of the Housing Board and the Peerless General Finance & Investment Co. Ltd. and one per cent by he State of West- Bengal.

By the order and notification dated July 22, 1994 made under Section 4 of the Act, the State Government acquired the aforesaid 1.82 acres of land for construction of housing complex. The notification was duly published in the official gazette and on and from the said date the lands vested absolutely in the State Government under sub-section (2) of Section 4 of the Act. By a subsequent notification dated December 9, 1994 made under Section 29 (1) of the Housing Board Act the State Government transferred 11 acres of land which included land measuring 1.82 acres, subject matter of the present proceedings, to the Housing Board. Under Section 29(1) of the Housing Board Act, the State Government is empowered to transfer to the Housing Board all such assets and liabilities of the State Government as if may decide so to do which stand vested and transferred to the Housing Board. On March 29, 1995 formal permissive possession of 11 acres of land which had now included 1.82 acres of land which had now included 1.82 acres of the land in question was handed over to the new joint sector company, i.e., the Bengal Peerless Housing Development Company Limited by the Housing Board to undertake construction of the housing project with effect from April 3. 1995. As a matter of fact the foundation stone for this housing project which was named as "Anupama" was laid by the Chief Minister of the Government of West Bengal on January 1, 1995. The housing project was to be executed on 17 acres of land which included 11 acres of land aforementioned. It is stated that necessary work for the purpose of housing project in fact started on the land by the Bengal Peerless Housing Development Company Ltd. on January 10, 1995.

Mr. V.R. Reddy the learned Additional Solicitor General who appeared for he State of West Bengal submitted that the State Government acquired a total area of 29.23 acres of land for the purpose of creating better living conditions in rural and urban areas by construction or reconstruction of

dwelling units for the community. The land vested in the State Government under Section 4 of the Act. He said 10.35 acres of land out of the land so acquired was released at the request of the Ministry of Urban Development. Government of India for the purpose of constructing Housing Project for Central Government Employees Welfare Organisation. Out of remaining 18.99 acres of land subject matter of these proceedings, were handed over to the Housing Board by different notifications under Section 29 of the Housing Board Act on certain terms and conditions relevant of which would be : (1) the land hereby transferred shall be utilised by the Housing Board solely for the purpose of houses and (2) the Housing Board shall take all steps expeditiously for sale of all houses/flats proposed to be built together with the common areas and facilities comprised on the area of land so transferred to eligible persons either by outright sale or on hire-ourchase basis at a price considered by the Housing Board as fair and reasonable.

In supplementary affidavit filed by the Joint Secretary, Housing Board, Government of West Bengal, it has been stated as under :

> "I. The State Government duly held negotiations and discussions with different private sector companies which submitted applications to the Government for formation of Joint sector companies in collaboration with the West Bengal Housing Board. On 3.9.93 State Government selected 4 private companies who were willing to form joint sector companies in collaboration with West Bengal Housing Board and out of the said 4 private companies, the Committee appointed for the said purpose by the State Government selected two companies one of them being Peerless General Finance and Investment Co. Ltd, and such selection was duly approved by the State Government.
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> II. The joint sector company namely Bengal Peerless Housing Dev.Co. Ltd. is run by an independent Board of Directors. The Board of Directors consist of 7 (seven) Directors out of which 4 (four) Directors (two of them are Ex-Secretaries, Housing Department, Govt. of West Bengal and other two are Ex-Commissioners of Housing Board, who are still the Board members of West Bengal Housing Board) are nominated by the State Government. The Chairmen of the joint sector company is nominated by the State Government and thereby the State Government nominees are in the majority in the Board. III. The said joint sector company has the overall responsibility for the construction and implementation of the housing project which shall be within the policy frame work of the Govt. of West Bengal. The housing scheme shall be prepared and executed as defined in the West Bengal Housing Board Act. The implementation of the project, marketing and sale of the dwelling units will be done by the joint and control of State of West Bengal Housing Board. The same shall be implemented if and when required by the Govt. of West Bengal and Housing Board. Therefore, a joint sector company has been constituted in the name of Bengal Peerless Housing Development Company Limited, strictly to give effect to the Government policy on serving the public interest of providing dwelling units to people under schemes to be formulated and implemented under the policy frame work of the State Government of West Bengal such schemes however have to be

implemented under the overall guidance and control of the West Bengal Housing Board. IV. The State Government/West Bengal Housing Board will have the majority in the Board of Directors of the Company. No activities can be carried on by he joint sector company without the approval of the Government and without the consent of the Government and without the consent of the Government nominee Directors. The whole purpose of joint sector company of the joint sector company is clearly for effectuating the public interest of providing dwelling accommodation for the homeless people. As already indicated, the substantial number of dwelling units in the project the for the Lower Income Group and Middle Income Group. However, to provide subsidised housing to the Lower and Middle income groups the joint sectors company has adopted a suitable mix of housing of various groups viz., LIG, MIG and HIG so as to make the project economically viable.

The whole policy with which the joint sector company, the Bengal Peerless Housing Development Company limited, has been functioning and has intended to function is not to make more than nominal profit.

V. LIG and MIG dwelling units constitute 73% of the total units that are proposed to be constructed apart from the additional land mentioned above which shows that the preponderant object of the schemes is to provide accommodation to people belonging to the Lower Income and Middle Income Groups at very reasonable rates and such rates are only possible because of gross subsidy by sale of the units of HIG which constitutes only 27% of the total project.

VI. It is submitted respectfully that the housing scheme which is now being implemented is predominantly and wholly for the benefit of the common people and preeminently for public purpose.

VII. From the facts, it will thus clearly appear that the land for which the project is being constructed belongs to West Bengal Housing Board and the joint sector company have been entrusted only to implement the housing project of the Govt. of West Bengal and such work is being done as per the scheme framed under the West bengal Housing Board Act approved by the West Bengal Housing Board and under the overall guidance and control of the State Government/Housing Board. Funds for the construction have been provided for by Peerless General Finance and Investment Company Limited to the joint sector company and also recovered advances from the prospective allottees by dwelling units. The only financial contribution of the Government through Housing Board is to the acquisition of equity shares of the joint sector company to the extent of Rs. 10.0 lacs."

The supplementary affidavit aforesaid also sets out the scheme of the Housing project and also the considerations which were taken into account while framing the scheme. These may also be set out as under :

"SCHEME OF THE HOUSING PROJECT I. The types of flats and the sale prices thereof have also been settled and or fixed by the West Bengal Housing Board and the terms of sale provide that escalation of sale price of the flat will not be allowed, even if there are additional expenditure as there in fact has been. The project will comprise of 912 flats for the people of different income groups. II. The eligibility criteria for allotment of flats to public in general has also been stipulated and or specified by the West Bengal Housing Board. The terms and conditions as such are as follows :-

(a) One member of the same family which includes husband/wife, dependent parents and dependent children can submit one application only (b) one dwelling unit will be allotted to one person of the family and (c) those person who does not have any house/flat/building plots of land in Calcutta Metropolitan area are only eligible to apply for allotment of flat.

III. Procedure for allotment of flats to the public in general has also been guided by the West Bengal Housing Board. Application for allotment of flats was invited from the public after wide publication in the newspaper. About 4353 nos, of applications were received against 912 flats and thereafter a lottery was held in a public place under the guidance and supervision of West Bengal Housing Board where Sri. K.N. Sinha. Minister of State. Sri. Sailen Manna (Padmashree) alongwith the applicants were present to witness the lottery. Only those persons who were successful in the lottery were allotted their respective flats. As a matter of fact, the mode of allotment of flats was entirely based upon the lottery and neither the Housing Board nor the State Government nor the joint venture company had any role to play in the matter of allotment of flats according to their choice. IV. In he said Housing complex as has been directed by the West Bengal Housing Board the joint sector company will have to install sewage treatment plant and 33 KV electrical sub-station with the technical help of the West bengal State Electricity Board. SCHEME WAS FRAMED TAKING INTO CONSIDERATION THE FOLLOWING ASPECTS I. At least 50% of the dwelling units are to be planned for the Low & Middle Income Group of people of the society who are not in a position to purchase any dwelling unit within he urban area of Calcutta from any other source because of high price of such flats which are beyond the reach of common people. Accordingly, sale price of the flats for the LIG & MIG dwelling units were fixed at a rate as low as Rs.349.00 and Rs.

509.00 per s.ft and market study reveals that in no other metropolis, even in Calcutta, flats are provided at this rate when market price of building materials have gone high beyond expectation. In this scheme 73% of such units are planned for this section of society.

II. No price escalation shall be charged and flats are to be handed over at a fixed price and within the scheduled date.

III. The prices of the flats are on the plinth area as per National Building Code and not on Super built-up area.

IV. The construction work started in January, 1995 and substantial progress has been made so that all the flats can be handed over to the respective allottees on or before 1998 as promised.

It is respectfully submitted that any scheme to solve the housing problem would promote a public purpose. Such a scheme need not be undertaken by the State directly but may well be implemented under the supervision, control and guidance of the State. Such purpose may be achieved also through a joint sector company. It is becoming increasingly necessary to induce private enterprise to co- operate with the State Government in particular sector of the economy for providing relief as early as possible. In the context of Act II of 1948, the Hon'ble High Court at Calcutta has uniformly taken this view that the State can invoke the provision of Act II of the 1948 where the State required to deal with any of the purposes covered under the said Act through some other agency including a Company."

It was submitted that any scheme to solve the housing problem would promote a public purpose and that such a scheme need not be undertaken by the State directly but may well be implemented under the supervision, control and guidance of the State and that such a purpose may be achieved also through a joint sector company. Mr. Reddy submitted that it was becoming increasingly necessary to induce private enterprise to cooperate with the State Government in particular sector of the economy for providing relief as early as possible.

In this background it is difficult for us to accept the submissions of the writ petitioners that the purpose for which the requisition had been made was not a public purpose within the meaning of the Act or that the circumstances of the case did not justify the invocation of the provisions of the Act or that the exercise of powers under that Act was a colourable exercise of power.

At this stage we may also notice some of the judgments cited at the bar.

In Sureshchanora C. Mehta vs. State of Karnataka and Others (1994 Supp (2) SCC 511) Section 17 (5) of the Bangalore Development Authority Act, 1976 was considered which provided that every person whose name appeared in the assessment list of the local authority or land revenue recorded shall be served with a notice so that he could make necessary objection to the notification published under sub- section (1) of Section 17 of that Act. Sub-section (5) of Section 17 provided as under :

"During the thirty days next following the day on which such notification is published in the official Gazette the Authority shall serve a notice on every person whose name appears in the assessment list of the local authority or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the authority proposes to recover betterment tax requiring such

> person to show cause within thirty days form the date of the receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made."

The objection of the appellant in that case was that since his name was entered in the revenue record he had a right to the notice. It appeared when notice under sub- section (1) of Section 17 was issued the name of the appellant was not found entered in the assessment list of the local authority or in the land revenue register making him primarily responsible to pay land revenue. The Court observed that existence of the name of such person in the concerned record before publication of the notification under Section 17(1) was a condition precedent and the authority was not required to make a roving inquiry as to who is the person entitled to a notice. The Court agreed with the judgment of the karnataka High Court rejecting the contention of the appellant that the authority the contention of he appellant that the authority had requisite knowledge as to who was the owner of the property in question and it held that sub-section (5), of Section 17 made it clear that notice was required to be served on the person whose name was found in the revenue register and who was primarily responsible for the payment of the land revenue. The High Court had also held that the knowledge of the authority by any other process could not be treated as making it responsible for serving notice in terms of sub- section (5) of Section 17 that the knowledge of ownership or interest in collateral proceedings was not the deciding criteria. The Court had held that one who was responsible for the payment of land revenue or property tax would alone be entitled to the notice under Section 17 (5) of the Act. The Calcutta High Court in the impugned judgment distinguished this judgment of the Supreme Court in Sureshchanora C. Mehta's case on he ground that in that case the law itself prescribed notice to be served on a person whose name was entered in the revenue record. But the observations of the Supreme Court in that case that "the authority is not required to make a roving inquiry as to who is the person entitled to a notice" is quite apt and has to be given due weight and consideration.

In Winky Dilawari (Smt.) and another vs. Amritsar Improvement Trust, Amritsar (1996 11 SCC 644) Section 38 of the Punjab Town Improvement Act, 1922 envisaged issue of notice of proposed acquisition of lamb. The section is as under :

> "38, Notice of proposed acquisition of land. -(1) During the thirty days next following the first day on which nay notice is published under Section 36 in respect of any scheme under this Act the trust shall serve a notice on -
>
> (i) every person whom the trust has reason to believe after due enquiry to be the owner of any immovable property which it is proposed to acquire in executing the scheme.
>
> (ii) the occupier (who need not be named) or such premises is the trust proposes to acquire in executing the Scheme.
>
> (2) Such notice shall -

(a) state that the trust proposes to acquire such property for the purposes of carrying out a scheme under this Act, and

(b) require such person, if he objects to such acquisition, to state his reasons in writing within a period of sixty days from the service of the notice.

(3) Every such notice shall be signed by, or by the order of the chairman."

In that case the disputed property was a vacant site and the appellant had purchased the same on January 24, 1985. Amritsar Improvement Trust had framed a scheme under Section 36 of the Act which was given due publicity and objections invited. Thereafter proceedings were taken up for acquisition of the land proposed to be acquired under the scheme. The scheme was approved by the Government on March 19, 1985. After the purchase was made by the appellant his name was not mutated in the records of the Municipality and the question before the Suoreme Court was whether the failure to serve the notice on the appellant vitiated the approved scheme. Facts are not quite clear from the judgment as to whom notice had been served but one can safely assume that in had been served on the person who was the erstwhile owner of the property before it was purchased by the appellant. The Court held that in these circumstances failure to serve notice on the appellant did not vitiate the approved scheme. The Court also observed that the principle that the registration of sale was constructive notice had no application to such a situation. The court on the argument of he appellant that registration of a document in the Office of the Sub-Registrar was a notice as envisaged under the Registration Act, 1908 observed as under :

"But the question is whether the public authorities are expected to go on making enquiries in the Sub- Registrar's office as to who would be the owner of the property?

Reasonable belief, after due enquiry, contemplated under Section 38 (1) (1) would envisage that the persons who are reputed to be known as owners of the immovable property which was proposed to be acquired after the Scheme was approved by the Government, are the actual owners of the property. It is now settled law that public functions are to be discharged through its officers and if there is dereliction on their part in the performance thereof and the public inconvenience is enormous, the Court always considers the procedure to be directory. It has always considered, by a catena of decisions of his Court such a procedure to be directory. If it were a case where a reduced owner whose name has already been entered in the municipal takes over a paid the municipal takes over a period to the Municipality or the Gram Panchayat, as the case may be, necessarily there would be scope for the authorities to reasonably believe, after due enquiry, that he would be the owner. If they derelict in making such necessarily it may be held that its failure to get the notice served on the owner, who was believed to be the owner of the property, for the proposed acquisition, vitiates the acquisition made under the Schedule read with Section 59 of the Act. but if in a short interregnum there were successive sales and transfer of the land, the public authorities are not expected to go on making enquiries in the Sub-Registrar's office as to who would be the owner of the immovable property proposed to be acquired. The

> principle proposed to be acquired. The principle notice has no application to such a situation."

Constitutional validity of the West Bengal Land (Requisition and Acquisition) Act. 1948 was upheld by the Supreme Court in S.M. Nandy & Ors. vs. State of West Bengal and Ors. (1971 3 SCR 791). The Court held as under :

> "We are, therefore, of the opinion that it is difficult to hold that restrictions imposed by the PDS Act are unreasonable. Fair compensation has been provided for requisitioning, which is, determinable by a Civil Court and ultimately by the High Court or the Supreme Court, Regarding the necessity for requisitioning it must necessarily be left to the State Government. It is true that there is no express provision to make a representation against an order of requisition but there is no bar to a representation being made after an order is served under s. 3(2) of the Act."

In H.D. Vora vs. State of Maharashtra and others. (AIR 1984 SC 866) relying on the earlier judgment of the Court in State of Bombay vs. Bhanji Munji (1955 1 SCR 777: (AIR 1955 SC 41) which was a case under the Bombay Land Requisition Act, 1948, the Court observed that it was not necessary that the order of requisition must explicitly set out the public purpose for which it was made and that the only requirement of the law was that the requisitioning must be made for a public purpose and that so long as there was a public purpose for which an order of requisition was made, it would be valid, irrespective of whether such public purpose was recited in the order of requisition or not. But then the State Government has to show that the order of requisition was made for a public purpose and that necessary facts showing the public purpose for which the order of requisition was made would have to be established by the State Government from its record to the satisfaction of the Court. In that case the Court held that the order was not made for public purpose and further that the requisition could not be for an indefinite period. The Court was of the view that the order of requisition even though valid ceased to be valid and effective after the expiration of the reasonable period of time but at the same time the Court observed that if was not necessary for it to decide what period of time might be regarded as reasonable for the continuance of an order of requisition in a given case because ultimately the answer to that question case because ultimately the answer to that question must depend on the facts and circumstances of each case. This judgment in our view is of no help to decide the issue now raised before us.

It is a matter of common knowledge that there is acute shortage of housing accommodation both in rural and urban areas of the country. Since late the rural and urban areas of the country. Since late the prices of the real estate have sky-rocketed making it beyond the reach of low income and middle income people. State has a duty to perform to give shelter to homeless people specially to people in the low income group. In the present case State was unable to meet this gigantic task. In the background of shortage of resources which the State has the legislature enacted the Housing Board Act and constituted the Housing Board to meal the challenge. Housing Board Act was amended to bring in the concept of joint venture in order to tag the resources of the private sector. Thus, a joint feature came into being as disclosed in the supplementary affidavit of the State as to how the process of starting of joint venture had gone into and how the Board of Directors of the joint sector company

had been constituted and how the State and Housing Board exercise control over this joint sector enterprise.

Simply because there is an element of profit could not make the whole scheme illegal. A private entrepreneur will certainly look to some profit but to see that the profit motive does not lead to exploitation even of the rich and that the houses are available to the poor people and to middle class people at nominal o affordable prices, or even on no profit no loss basis, the Housing Board exercises the necessary control. It is certainly a public purpose to provide houses to the community especially to poor people for whom the prices are beyond their means and they would otherwise be never able to acquire a house.

What has been done in the present case is that the profit earned on sale of flats of HIG have been pumped into to subsidise the prices of the houses failing in LIG and in this there would certainly be element of profit both for the Housing Board as well as the private company in the joint venture for selling flats of HIG. We fail to see how public purpose is not being served in the present case.

Court must shake off its myth that public purpose is served only if the State, or the Housing Board or the joint sector company does not earn any profit. There cannot be any better authority than the State or the statutory corporation to supervise or monitor the functions of the joint venture company. Courts will certainly step in if the public purpose is sought to be frustrated.

In the present case Directors appointed by the Housing Board/State on the Board of Directors of he Joint Venture Company would certainly see that no run away profit is earned and that sale price of HIG houses is guided by market forces but there is no exploitation. Every section of the society needs protection from exploitation. It is however not possible nor desirable to lay down any principle as to how this to be done in a particular case.

In Reg. v. Hillingdon L.B.C., Ex p. Punlhofer (H.L.(E.)) (1986 1 AC 484) the court was considering the power of the housing authority constituted under the Housing (Homeless Persons) Act 1977 in refusing an application that the applicants were neither homeless nor threatened with hopelessness. The applicants. A married couple, lived with two young children in on room at a guest house where no cooking or laundry facilities were available in the premises and no meals except breakfasts were provided. Subsequently the housing authority reconsidered the application, but having taken into account the housing conditions prevailing in their area, they confirmed their original decision. The applicants applied for judicial review of the housing authority's decision. Hodgson, J. granted the relief, holding that the accommodation to be available for a person and his family had to be appropriate to the needs of the family and that no reasonable housing authority could have come to the conclusion that the accommodation in question was appropriate. On appeal to the Court of Appeal by the housing authority the same was allowed. Further appeal by the applicants to the House of Lords was dismissed. The following observations of Lord Brightman who spoke for the Court would be relevant :

> "In the instant case, the bona fides of the borough is not in dispute. On the facts in evidence, it is in my opinion plain that the council were entitled to find that the

applicants were not homeless for the purposes of the Homeless Persons Act because they had accommodation within the ordinary meaning of that expression. My Lords, I and troubled at the prolific use of challenging the their functions under the Act of 1977. Parliament intended the local authority to be the judge of fact. The Act abounds with the formula when, or if, the housing authority are satisfied as to this, or that, or have reason to believe this, or that. Although the action or inaction of a local authority is clearly susceptible to judicial review where they have misconstrued the Act, or abused perversely, I think that great restraint should be exercised in giving leave to process by judicial review. The plight of the homeless is a desperate one, and the plight of the applicants in the present case commands the deepest sympathy. But it is not, in my opinion, appropriate that the remedy of judicial review, which is a discretionary remedy, should be made use of to monitor the actions of local authorities under the Act save in the exceptional case. The ground the exercise of an administrative discretion is abuse of power - e.g. bad faith, a mistake in construing the limits of the power, a procedural irregularity, or unreasonableness in the Wednesbury sense - unreasonableness verging on an absurdity : see the speech of Lord Scarman in Reg. Secretary of State for the Environment, Ex parte Nottinghamshire County Council (1986) A.C. 240, 247-248. Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely."

In L. Chandra Kumar vs. Union of India (AIR 1997 SC 1125) the Court held that power of judicial review over legislative action vested in the High Court under Article 226 and in the Supreme Court under Article 32 is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of the High Courts and Supreme Court to test the constitutional validity of legislations can never be ousted or excluded. No doubt under the Constitution power of judicial review of the action State or its authorities is unfettered but restraint should however be the hallmark of judicial review.

The Courts normally do not interfere in the policy matters of the State. If, however, the policy so formulated is against the mandate of the Constitution or any statutory provision it can certainly be tested on the principles of judicial review. When an act falls within the policy of the State which has been formulated for the benefit of the poor and needy and which policy cannot be faulted, court should stay its hands and need not examine the details minutely with a hands and need not examine the details minutely with a magnifying glass to find some fault here and there magnifying glass to find some fault here and there unless there are allegations of mala-fides. An overall view is to be taken of the matter and this potent weapon of judicial review cannot be used indiscriminately.

We find in the present back-drop the inability of the State Government and the Housing Board to meet the challenge to achieve the target of even constructing 50,000 dwelling units in urban areas to tackle the acute problem of homelessness for different categories of people particularly those falling

in Lower Income Group (LIG) and Middle Income Group (MIG) ; he State legislature amending the Housing Board Act and providing for incorporation of a joint sector company for executing the housing scheme on the terms and conditions to be approved by the State Government ; selection of the private entrepreneur for incorporation of the joint sector company with the Housing Board ; the Constitution of the Board of Directors of the joint sector company ; the control of the Housing Board and the State Government over the joint sector company to execute the scheme of the housing project ; control on the fixation of precise of the flats to be constructed by the joint sector company ; relevant factors taken into consideration for execution of the housing project and all these to tackle the urgent and growing need of providing shelter to the LIG and MIG people when it is not possible for these people to acquire a house of their own with escalating real estate prices ; it cannot be said that the public purpose is not being served or the incorporation of the joint sector company viz. Bengal Peerless Housing Development Company Ltd. and the execution of the housing project "Anupama" by this joint sector company, in the given circumstances, on the land in question which is part of the bigger piece of land is not in public interest. The Housing Board acts as regulatory body and the State Government overseas the housing project and has also imposed certain terms and conditions. No ulterior purpose has been alleged and it cannot be said that the power exercised by the State authorities are in any way arbitrary or irrational or there is any abuse of power. Rather the legal compulsion of the State and the Housing Board to get the housing project executed through a joint sector company is quite understandable. We also find the impugned action is within the purview of law and is valid.

Accordingly, these appeals are allowed, judgment of the Division Bench of the Calcutta High Court is set aside and the writ petitions filed by the respondents are dismissed. However, there will be no order as to costs.