Ramchandra Maroti and ors. Vs. the Collector (Land Acquisition Officer for the Nagpur Improvement Trust), Nagpur and ors.

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Court : Mumbai

Decided On : Mar-15-1974

Reported in : AIR1975Bom281

Judge : Chandurkar and ;Dharmadhikari, JJ.

Acts : Constitution of India - Articles 14, 31, 19 and 226; Nagpur Improvement Trust Act, 1936 - Sections 26, 27, 31, 39, 41, 45, 59 and 68

Appeal No. : Spl. Civil Appln. No. 422 of 1970 with Spl. C.A. Nos. 515 of 1968 and 494 of 1970

Appellant : Ramchandra Maroti and ors.

Respondent : The Collector (Land Acquisition Officer for the Nagpur Improvement Trust), Nagpur and ors.

Advocate for Def. : M.M. Qazi, A.G.P., ;Y.R. Dandige and ;M.P. Badar, Advs.

Advocate for Pet/Ap. : S.V. Natu and ;Kamborkar, Advs.

Judgement :

Dharmadhikari, J.

1. As all these writ petitioners relate to the lands comprised in one and the same Scheme, namely, Eastern Industrial Area Street Scheme, and were argued together, they are being disposed of by this common judgment. The petitioner in Special Civil Application No. 422 of 1970 are owners of Khasra Nos. 61, 68, 69 and 70, admeasuring about 39.77 acres of land of mouza Chikhili situated within the territorial limits of the Corporation of City of Nagpur. It is the contention of the petitioners that the income from these lands is the only source of their livelihood.

2. Respondent No. 2, the Nagpur Improvement Trust, framed a Scheme known as Eastern Industrial Area Street Scheme, referred to hereinafter as the Scheme. Initially it seems that such a scheme was framed in the year 1947. A notice under Section 39 of the Nagpur Improvement Trust Act, referred to hereinafter as the Act, was also published and objections were invited. According to the petitioners, they had raised objections to the said Scheme in the year 1948. However it seems from the record that the said scheme was dropped and thereafter on 16th March 1963 the Nagpur Improvement Trust acting through its Board of Trustees passed a resolution at a special meeting for framing the scheme, namely, the Eastern Industrial Area Street Scheme. This scheme was framed for meeting increasing demand for developed plots, particularly for small and medium factories and industries and it also envisaged development of residential plots for persons and workmen connected with the factories . The scheme was also framed because there has been large defamed because there has been large demands for industrial and residential plots particularly on account of the proximity of railway line in this area. It was also noticed by the Nagpur Improvement. Trust that there were constructed at random, and therefore, it was necessary to re-lay certain inhabited pockets. In execution of the scheme a provision was made for sites for industrial and commercial purposes creating alternate sites fro setting the existing structure owners. There was also a demand for residential plots for allotment to evictees, low income group and middle in come group people and for meeting this demand a provisions was also made in the said scheme. Thus the object of the scheme was to provide plots for commercial and industrial purposes as also plots for residential purposes.

3. After passing of the resolution by the Board of Trustees of the Nagpur Improvement Trust, a notice was published under Section 39 of the Act. A notice of proposed acquisition under Section 41 of the act was also issued and was duly served upon the petitioners. No objection was taken by the petitioners to the proposed scheme, though it seems that some objections were raised by other land owners. The said scheme was thereafter dully sanctioned by the State Government under Section 45 of the Act. After the sanction of the said scheme, proceedings for the acquisition of he land of the petitioners were taken before the Land Acquisition Officer and a notice under Section 9(3) of the Land Acquisition act was issued to the petitioners. The petitioners participated in the said proceedings and ultimately an award dated 31-12-1969 was passed by the Land Acquisition Officer. We are informed that the petitioners have sought a reference under Section 18 of the Land Acquisition Officer and the said reference is still pending.

4. In the present petition the petitioners have challenged the acquisition of their lands on the ground that their lands are not liable to be acquired compulsorily under the provisions of the Act for the said scheme. The petitioners have also challenged the acquisition of there lands being violative of their fundamental rights under Articles 31 and 19(1)(f) and (g)of the Constitution of India. According to the petitioners, there is no power under the Act to compulsorily acquire the land of the petitioners for the purposes for which they are being acquired by the Nagpur Improvement Trust. The petitioners have also filed an application under Section 68 of the act for abandonment of their are a from the acquisition . Such an application was filed by the petitioners in relation to Khasra Nos. 61, 68 and 70 only. It seems from the record that in the said application no reference was made to Khasra No. 69 as such. This application of the petitioners was also rejected by the Nagpur Improvement Trust and this rejection of their application is also challenged by the petitioners on the ground that the order passed by the Nagpur Improvement Trust rejecting their application is discriminatory and is, therefore, violative of the petitioners fundamental rights under Article 14 of the Constitution of India. It is the case of the petitioners that the land of one Abdullabhai has been abandoned by the Improvement Trust, whereas the Improvement Trust has rejected their application for abandonment of there lands and thus has given a discriminatory

treatment to the petitioners.

5. It is also the contention of the petitioners in this writ petition that framing of the scheme and acquisition of their k lands by the Nagpur Improvement Trust is in colourable exercise of its powers not vested in the Trust as such. The petitioners have further contended that the exercise of the power by the Improvement Trust is not only mala fide, but in substance it also amounts to colourable exercise of their power because the Improvement Trust has no power to acquire the lands for the purposes enumerated in the scheme. The petitioners have also challenged the sanction granted by the State Government to the scheme under Section 45 of the Act on the ground that the State Government amounts to bona fide misuse of the power. The petitioners have also challenged the award passed by the Land Acquisition Officer on the ground that the Land Acquisition Officer has committed an error in not granting them interest on the amount of compensation according to the provisions of the Ac the. But it is not necessary to decide this challenge in this writ petitioners have already sought a reference under Section 18 of the Land Acquisition Act in this behalf and the said reference is still pending.

6. Shri Natu, the learned counsel for the petitioners, has taken us through the relevant Trust Act. It is well known that Nagpur, which in its origin, was a medieval town expanded gradually by the absorption of number of village containing irregular groups. The city has grown up without any planning with the requirements of already overgrown population. There has been a great influx of people from near about village to the city for the purpose of residence and employment. An industrial development was taking place in and around the city which in its turn was attracting the people. There was no room for the expansion of public amenities like hospitals educational, institutions, public gardens and parks etc. In view of these circumstances the necessity for taking systematic measures for improvement and expansion of the city had been since long apparent. Therefore, for the proper and planned improvement and expansion of the City of Nagpur, the Nagpur Improvement Trust Act was enacted by the Legislature. The preamble to the Act makes it very clear that the said Act was enacted by the Legislature for making provision for the improvement and expansion of the town of Nagpur in the manner provided by the Act itself. The duty for carrying out the necessary

provisions of the Act, including framing of the scheme and its execution, was vested in a Board called the Nagpur Improvement Trust, Section 4 of the Act then provides for the constitution of the Trust which includes a Chairman, a Chairman of the Standing Committee of the Corporation, the Chief Executive Officer of the Municipal Corporation one Councilor of the Corporation and four persons appointed under sub-section (2) of Section 4 of the Act of whom not less than two shall be non-officials residing within the limits of the area to which the Act of whom not less than two shall be non-officials residing within the limits of the area to which the Act applies and one member of the Legislative Assembly. Chapter IV of the Act thereafter provides for improvement schemes. An improvement scheme may provide for all or any of the matters specified in Section 26 of the Act. Thereafter Section 27 lays down the types of Improvement schemes and further states that an improvement scheme shall be one of the following types or may combine any two or more of such types, or of any special features thereof, that is to say,-

a. a general improvement scheme;

b. a re-building scheme

c. a re-housing scheme;

d. a street scheme;

e. a deferred street scheme;

f. a development scheme;

g.a housing accommodation scheme;

f. a future expansion or improvement scheme;

(i) a drainage or drainage including sewage disposal scheme.

The present scheme has been framed by the Nagpur Improvement Trust under Section 31 of the Act and is known as the Eastern Industrial Area Street Scheme. The said scheme was duly sanctioned by the Government vide Government

Resolution dated 4.3.1967.

7. It is contended by Shri Natu, the learned counsel for the petitioners, that under the scheme the lands covered by area of Khasra Nos.68 and 70 are shown as earmarked for light industry, whereas the major part of the area of Khasra Nos. are earmarked for shops, parks etc,. According to Shri Natu, the acquisition of the land of the petitioners, which is earmarked for residential purposes, is not authorised by the provisions of the Act. It was also contended by him that a part of this land will be used by the Nagpur Improvement Trust for the purposes of earning income out of disposal of the plots and it is not open for the Improvement Trust to acquire the land compulsorily for such a purpose. As the said acquisition is not open for the Improvement Trust to acquire the land compulsorily for such a purpose of residential plots is violative of the petitioners fundamental right under Arts.31 and 19(1)(f) of the Constitution of India. According to Shri Natu, even if the Nagpur Improvement Trust required certain area of the petitioners for the purposes of providing building sites of for residential purposes, the petitioners were prepared to carry out the said purposes at their own costs according to the terms and conditions to be laid down by the Nagpur Improvement Trust to compulsorily acquire the property of the petitioners for the said purpose. Thus, in substance the whole argument of Shri Natu so far as his challenge under Article 31 and 19(1)(f) is concerned is based on the ground that the Nagpur Improvement Trust has no authority to acquire the land compulsorily under the Nagpur Improvement. Trust Act for providing the plots for residential purpose or for disposal of the plots for the said purpose.

8. Section 26 of the Act provides for framing of improvement schemes for all or any of the matters enumerated therein, Section 26(a) reads as under:

'26(a) the acquisition by purchase, exchange, or otherwise of any property necessary for or affected by the execution of the scheme.'

'31(1) Whenever the Trust is of the opinion that, for the purpose of-

(a) providing building sites, or

(b) remedying defective ventilation, or

(c) creating new or improving existing means of communication and facilities for traffic, or

(d) affording better facilities for a conservancy and drainage it is expedient to lay out new streets or alter existing streets (including bridges, causeways and culverts) the Trust may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as it may think fit.

(2) A street scheme may, within the limits of the area comprised in the scheme, provide for -

(a) the acquisition of any land which will, in the opinion of the Trust, be necessary for its execution;

(b) the re-laying out of all or any of the lands so acquired, including the construction and reconstruction of buildings by the Trust or by any other person and the laying out, construction, and alteration of streets and through fares;

(c) the draining, water-supply, and lighting of streets and through fares so laid out, constructed or altered;

(d) the raising, lowering, or reclamation of any land vested in, or to be acquired by, the Trust for the purposes of the scheme;

(e) the formation of open spaces for the better ventilation of the area comprised in the scheme;

(f) the acquisition of any land adjoining and street, throughfare, or open space to be formed under the scheme.'

As already stated here in before, the present scheme was framed by the Nagpur Improvement Trust for the various purposes, including meeting large demands for industrial and residential plots. According to Shri Natu, the plots reserved for the residential purposes from Khasra Nos. 61 and 69 are not necessary for the purpose of execution of the scheme as such. He has further relied upon Annexure

F whereby an offer was made to the owners of the fields by the Improvement Trust for accepting 3000 sq.ft. plot for acquisition of every acre of land, included in Eastern Industrial Area Street Scheme. Such an offer was made by the Improvement, Trust for grant of a plot in lieu of the compensation to which the petitioners were entitled under the provisions of the Act. Therefore, according to Shri Natu, in any case an area of 2.75 acres was not required for the scheme because of otherwise the Improvement Trust would not have parted with it or made an offer of it to the petitioners as has been done vide Annexure F dated 19.2.1970. He has also drawn our attention to part 4 of the return filed on behalf of Improvement return filed on behalf of the Improvement Trust wherein it was admitted by the Improvement Trust that the scheme also envisages the provision for income to the Trust by sale of plots. On the basis of the admission it is contended the basis of this admission it is contended by Shri Natu that, therefore, if any case this land is not necessary for the execution of the scheme framed by the Trust ad in substance the Improvement. Trust is acquiring the said Land for earning income by sale of the land belonging to the petitioner and it is not open to the Trust to acquire the land for this purpose. It is not possible for us to accept these contentions of Shri Nattu.

9. The scheme framed by the Nagpur Improvement Trust known as the Eastern Industrial Area street Scheme was framed for making adequate provision for the improvement and expansion of the town . The purpose for which the scheme has been framed by the Nagpur improvement Trust has been duly enumerated in the scheme, building sites to evictees of the scheme also makes a provision for providing of building sites to evictees of the scheme, low income group people etc., as well as for industrial and commercial purposes. Section 31 of the Act empowers the Improvement Trust to frame such a scheme and thereafter Section 59 of the Act lays down that the Trust may, with the previous sanction of the State Government acquire land under the provisions of the land Acquisition Act, 1894 as modified by the provisions of this Act, for carrying out any of the purposes of this Act. Once it is held that the scheme has been framed by the Nagpur Improvement Trust for the purposes of the Act, namely, for making a provision for the improvement and expansion of the city, then, in our opinion, it cannot be said that the Improvement Trust had no authority to frame the scheme or acquire the lands

of the petitioners for the purposes of execution of the scheme itself. It is not correct to say that a provision for providing building sites has been made by the Trust in the scheme for merely earning an income. A provision for building sites has been made even for the residential purposes in the scheme to meet the demands of the people in this behalf. It is no doubt true that the Trust will be disposing of certain plots by auction or otherwise as provided by Section 76 of the Act, Section 76 of the Act reads as under:

'76. Subject to any rules made by the State Government under this Act, the Trust may retain or may let on hire lease, exchanger or otherwise dispose of any land vested in or acquired by it under this Act'.

It is pertinent to note in the present case that even after the publication of the notice k under Section 39 of the Act the petitioners had not raised any objection to the scheme as such. Even in the present writ petition the scheme as a whole has not been challenged. The only challenge made in this petition is restricted to the land of the petitioners and the compulsory acquisition of their land. At no stage even a demand was by the petitioners to the Improvement Trust that they are prepared to carry out the layout etc of the land required for the residential purposes on the terms and conditions to be laid down by the Trust. Such a claim is made by the petitioners for the first time in the present writ petition only. Thus the present petition has been filed by some of the land owners whose lands are being acquired by the Trust for executing the scheme an a whole framed by the Trust under Section 31 of the Act.

10. Shri Natu in support of his contention s has relied upon a decision of the Supreme Court in State of Madhya Pradesh v. Ranojirao Shinde : [1968]3SCR489 . In the said case the provisions of Madhya Pradesh Abolition of Cash Grants Act were challenged on the ground that they violate the rights of the respondents in the said case under Articles 19(1)(f) and 31 of the Constitution of India. The said provisions were mainly challenged on the grounds that the abolition of the cash grants would augment the resources of the State but that cannot be considered as a public purposes under Article 31(2) of the Constitution of India and in that context it was observed by the Supreme Court that by providing for the payment of

some nominal compensation to the persons whose rights are acquired, as the acquisition in question in substance would only augment the resources of the State, and therefore, it is obvious that the public purposes contemplated by Articles 31(2) and 19(1)(f) would not include enrichment of the coffers of the State. The Act which empowers of the State to appropriate some one else's property for itself solely with a view to augment the resources of the State cannot be considered as a reasonable restriction in the interest of the general public. In our opinion, the observations made in the said decision have no application to the facts and circumstances of the presence. In the present case the land of the petitioners is being acquired with land of other persons for the purposes of an improvement scheme, which is obviously framed for achieving the public purposes contemplate by the Act. The lands are being acquired which are necessary for the purposes of executing the said scheme. It is no doubt true that some land, which is reserved for the residential purposes, will be disposed of as per the provisions of Section 76 of the Act itself. The said disposal is not only permitted by the specific provision of the Act itself, but the said disposal of the land is also in the public interest.

11. In Trustees for the Improvement of Calcutta v. Chandra Kant Ghosh AIR 1920 PC 51 while construing somewhat analogous provisions of Calcutta Improvement Act and the phraseology used in Section 42 of the said Act, which is analogous to the provisions of Section 26(a) of the Nagpur Improvement Trust Act, it was observed by the Privy Council as under:-

'The result is that in the opinion of their Lordships none of the suggested limitations of the usual and normal meaning of the word 'affected' in Section 42 are admissible and that there is no reason either in the general purpose of the Act or the special context, that the word should not be construed in its ordinary sense, and that, as so construed. Section 42 authorises the acquisition of the land of the respondent, which was inserted in the scheme because in the opinion of the Board, it would be enhanced in value by its execution........

In this case the respondent would be entitled to the value of his land assessed on the same principles as the value of the land actually required for the execution of the widened street and the effect would be not to deprive him of the value of his property, but only that he would no obtain the additional value due to the proximity of his land to the improvement scheme.

It was further argued on behalf of the respondents that, although the land of the respondent might be acquired by agreement, it was not subject to compulsory acquisition. Section 69, under the head 'compulsory acquisition', empowers the Board, with the previous sanction of the Local Government, to acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of the Act. It was said that to take land for the purposes of recoupment is not to take it in order to carry out any of the purposes of the Act, but only to provide a means whereby such purposes can be carried out. It is difficult to understand the distinction which is suggested. If the Board are authorised to acquire land affected in value by the execution of the scheme in order to provide funds in case of the public burden the acquisition of such land is directly in the purposes of the Act, and the powers of compulsory acquisition are clearly applicable there to. Section 81 of the Act confers on the Board wide powers for holding or disposal of any land vested in them or acquired by them under the Act amply sufficient for dealing with any land acquired under Section 42 and not required for the actual execution of the street scheme'.

Similar view is taken by the Supreme Court in Sheikh Gulfan v. Smat Kumar : [1965]3SCR364 , though in different context.

What is the nature of such a scheme has also been considered by the Supreme Court in Arnold Rodricks v. State of Maharashtra : [1966]3SCR885 . In the said case the provisions of Bombay Commissioners of Divisions Act and the notification under amending Land Acquisition Act were challenged. The said notification was also challenged on the ground that it was issued in colourable exercise of the power and was not for the public purpose. It was contended in the said case that the notifications were issued to subserve not a public purpose but some private purpose, and the State Government was not entitled to acquire property from A and give it to B. In this Context it was observed by the Supreme Court as under:-

'(20) It was urged before us that the State Government was not entitled to acquire property from A and given it to B. Reliance was placed on the decision of the Supreme Judicial Court of Massachusetts 204 Mass 607. But as pointed out by this Court, public purposes varies with the times and the prevailing conditions in localities, and in some towns like Bombay the conditions are such that it is imperative that the State should do all it can to increase the availability of residential and industrial sites It is true that these residential and industrial sites will be ultimately allotted the members of the public and they would get individual benefit, but it is in the interest of the general community that these members of the public should be able to have sites to put up residential houses and sites to put up factories. The main idea in issuing the impugned notifications was not to think of the private comfort or advantage of the members of the public, but the general public good. At any rate, as pointed out in : [1961]1SCR128 , a very large section of the community is concerned and its welfare is a matter of public concern. In our view the welfare of large proportion of persons living in Bombay is a matter of public concern and the notifications served to enhance the welfare of this section of the community and this is public purpose. In conclusion we hold that the notifications are valid and cannot be impugned on the ground that they were not issued for any public purpose.

(2) Mr. Pereira then urged that the notifications were colourable. We are not able to appreciate how the notifications are serving any collateral object. He said that he used the word 'colourable' in the sense used by this Court in : [1963]2SCR774 . Mudholkar J. observed as follows: 'If the purpose for which the land is being acquired by the State is within the legislative competence of the State the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourabe exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purposes, leaving aside for a moment the purpose of a company. If it appears that what the Government is satisfied about is not a public but a private purpose or no purposes at all the acquisition of the Government would be colourable as not being relatable to the power conferred upon it by the act and its declaration will be a nullity. Subject to this exception the

declaration of the Government will be final'.

(22) No material has been placed before us that the exercise of the power by the Government is colourable in this sense. The Government has the power to issue the notifications for a public purpose, and, as we have already held that the notifications were issued for a public purpose, there is no question of any colourable exercise of the power'. (underlining is ours)

Even in the minority judgment, while concurring with the views taken by the majority it was observed:

'(33) The attack of the petitioners is on the second part of the addiction in 1953 which provides for 'subsequent disposal thereof in whole or in part by lease, assignment, or sale, with the object of securing further development'. It is urged that all these words mean is that after the development envisaged in the first part of the addition the State or the local authority would be free to dispose of the land acquired in whole or in part by lease, assignment or sale, apparently to private persons. This, it is said, means that the State or the local authorities would acquire land in the first instance and development it in the manner already indicated and thereafter make profit by leasing, assign or selling it to private individuals or bodies. It is also said that the object of securing further development which is the reason for sale or lease etc. is a very vague expression and there is nothing to show what this further development comprises of................

(35) Take the case where land is acquired of the purpose of development of certain areas for residential purposes. The State or the local authority levels the land where necessary, makes a layout, provides roads, drainage, electric lines and such other amenities as may k be available where after houses have to be built. The State or the local authority may build these houses itself, but there is no reason why if the purpose is development of certain land as a residential k area, the State or the local authority may not lease, assign or even sell the lands laid out and already developed in order that further development of building houses may be achieved. In such a case it will always be open to the State Government or the local authority to provide, and we have no doubt that it will always so provide, that the persons to whom the lands is leased, assigned or sold carry out the further

object of building houses. There is also no reason why the State or the local authority should to provide for the terms on which residential buildings would be made the specification of such buildings, and the time within which they should be made. There is also no reason why the terms should not provide that if the further object of development is not carried out within a reasonable is not carried out within a reasonable time, the land would revert to the State or the local authority to be used for the purpose for which it was acquired. We have no doubt that the State or the local authority would see that such terms are imposed on those to whom lands are leased, assigned or sold with the object of further development by constructing houses where the scheme it for residential purposes. We have also an doubt that in imposing terms, the State or the local authority will see that the purpose for which the lease, assignment or sale is made is carried out within a reasonable time, failing which the land will revert to the State or the local authority. These matters are in our opinion implicit in the words 'with the object of securing further development'. and we have no reason to think that the State or the local authority would just dispose of the land so acquired by lease or assignment or sale without caring to see that further development which was the basis of acquisition takes place'.

A similar view has been taken by the Supreme Court in a subsequent decision in Smt. Venkatamma v. City Improvement Trust Board, Mysore : AIR 1972 SC2683 . After referring to the provisions of City of Mysore Improvement Act, the Supreme Court observed as under:

'The next argument is that the land cannot be acquired for shopping sites. It seems to us that the Board is competent to acquire land for shopping sites. Such a power is comprehended in Section 15(1) (b) and Section 15 (2) (d). According to Section 15(1) (b) the improvement scheme may provide for the construction of buildings. Shop are buildings. So land may be acquired for building shops. According to Section 15(2) (d) the scheme may provide for the establishment or construction of markets. It appears to us that the construction of shops is in effect the construction of a market. So the acquisition of land for shopping sites is permissible under the Act.

The last argument is that the land for shopping sites is not being acquired for a public purposes because the scheme is that the shopping sites would be let out to private individuals who will erect shops thereon. It is said that it amounts to the acquisition of the land of A for the purpose of giving it to B. and that is not permissible under our constitution.................

Any purpose which directly benefits the public or a section of the publics is a public purpose. This is not denied. It does not require much argument to show that the shops would cater for the needs of the persons living in the locality. But for the shops proposed to be built. the residents of the locality would have to go to distant parts of the city for shopping. So the building of shops in the locality would add to the comfort and convenience of the persons living there Accordingly the land is being acquired for a public purpose'.

Then a reference was made to the decision in Arnold Rodricks v. State of Maharashtra (cit, supra) and to the view taken by the majority as well as the minority judgments and in this context it was observed:

'In Arnold Rodricks v. State of Maharashtra, : [1966]3SCR885 land was acquired for 'development and utilisation of industrial and residential areas'. The majority as well as the minority judgments held that the land was acquired for a public purpose. The argument that the land was being acquired from A for the purpose of giving it to B was not accepted. Speaking for the majority Sikri J. (now Chief Justice) said; 'It is true that these residential and industrial sites will be ultimately allotted to members of the public and they would get individual benefit, but it is in the interest of the general community that these members of the public should be able to have sites to put up residential houses and sites to put u factories. The main idea in issuing the impugned notifications was not to think of the private comfort or advantage of the members of the public but the general public good'. Wanchoo J. in this separate judgment expressed himself more emphatically. He said that there was no reason why the State or the local authority should not have the power to see that further development takes place even through private agencies by lease, assignment or sale of such land. So long as the object is development and the land is made fit for the purpose for which it is acquired, there is no reason why the State should not be permitted to see that further development of the land takes place in the direction for which the land is acquired and even though that may be through private agencies ....' Indeed, development partly with the aid of private agencies has generally been adopted by various statutes dealing with the improvement of cities in this courtly. So this argument also cannot be accepted'. (Underlining is ours)

12. In Dalchand v. Delhi Improvement Trust : AIR 1967 SC87 the provision of United Provinces Town Improvement Act came for consideration before the Supreme Court. In the said case the provisions of supplementary scheme contemplating acquisition of land for effectuating an object of the original scheme w as challenged on the ground that it is a device to acquire land to be disposed of for private gain of an industrialist. After referring to the provisions of the United Provinces Town Improvement Act it was observed by the Supreme Court as under:-

'Resort to the provisions of the Act for acquiring land with a view to hand it over to an industrial concern for private gain may not fall within the terms of the Act. But in the circumstances already set out a scheme framed which contemplates acquisition of land for effectuating the object of the original scheme is not open to challenge on the ground that it is a device to acquire land to be disposed of for private gain of an industrialist. The original and the supplementary scheme was to effectuate the purpose of the original scheme and failure to frame that scheme may seriously have affected the utility of the original scheme'.

There is no warrant for the contention raised by the appellants that the land was not to be developed by the Trust, but was to be acquired and handed over to the Company. It is clear from the scheme that the general supervision and control over the execution of the supplementary scheme as over the original scheme was retained by the Trust and the Company was to develop the land subject to control under the Town Planning Scheme.

The argument that in a town expansion scheme under Section 32 read with Section 24(High Court) of the Act, there is no power to acquire land compulsorily, is futile. Section 22 (a) in terms authorises acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme. That provision may be incorporated in any of the improvement schemes of the types mentioned in Section 24. Again Section 32 clearly implies that in a town expansion scheme such a power would be reserved of the Trust is statutory declared liable to pay compensation when permission to alter any building or wall on a land in the area is denied. if the Trust does not proceed to acquire such land within one year form the date of such refusal. By Section 55 a general power to purchase or lease by agreement any land which the Trust is authorised to acquire is granted and by Section 56 power to acquire and under the Land Acquisition Act, 1894, is expressly conferred. It is true that under the provisions relating to other clears of scheme,. for instance . Section 26 (2) (f), Section 28 (2) (a), Section 29 (3) an express provision with regard to acquisition of land is made, and there is no such express provision in Section 32. But that by itself is not sufficient to Justify an inference that the provisions of Section 23(a) relating to acquisition of land necessary for or affected by the execution of the scheme may not be conferred in sanctioning a town expansion scheme, if the view confounded for be correct, Section 23(a) will not have application to any scheme. We are unable to see any reason why Section 56 which authorises the Trust to acquire land is to be restricted only to those case in which in the case of a specific scheme an express provision conferring power of acquisition apart from Section 23 (a) is conferred'.

13. In Lucknow Improvement Trust v. Mohd, Sadiq : AIR1952 All346 a similar challenge was raised before the Allahabad High Court. The scheme framed under U. P. Town Improvement Act was challenged on the ground that ultimate object of the scheme was to increases the income of the Trust an don this ground the trial Court had declared the scheme itself as ultra vires. After refereeing to the provisions of U. P. Town Improvement Act it was observed by the Allahabad High Court as under:

'It is only natural to expect that when public money spent by the Trust the Trust will take care to incur as little wasteful and unproductive expenditure as possible and will try to make as much income out of the investment as can legitimately be made. Under Section 23 (g)U. P. Town Improvement which may provide for the sale. letting or exchange of any property comprised in the scheme'.

The provisions of Section 23(g)of U. P. Town Improvement Act are similar to the provisions of Section 26(h) of the Nagpur Improvement Trust Act. Thereafter a reference was made by the Allahabad High Court to the provisions of Section 65 of U.P. Town Improvement Act, which are analogous to Section 76 of the Nagpur Improvement Trust Act and then it was further observed by the Allahabad High Court as under:

'There is thus no doubt that the Trust possesses the power to retain on let out on heir, lease, sell, exchange or otherwise dispose of any land vested in or acquired by it under the Act. The means of acquiring further income under the scheme are, therefore, perfectly legitimate'.

In our opinion the principle of law laid down in the aforesaid decision will aptly apply to the present enactment as well as the Scheme. From the bare reading of the present scheme, it is quite clear that the main object and the purpose of the scheme is to frame an improvement scheme for the purposes specified therein. The land is not acquired by the Improvement Trust for the purposes of making gain simpliciter by sale of the property. After execution of the improvement scheme the plots are sold by the trust to the various persons who are in need of them. The provisions is made in the scheme for the residential plot in the interest of general public and it is the general public which is benefited by the scheme. The Nagpur Improvement Trust Act is a special enactment providing for a constitution of a Trust and framing of schemes for improvement and expansion of the city. It also makes a provision regarding expenditure which could be incurred by the Trust. The present scheme though framed under Section 31 of the Act is in substance a combined scheme as contemplated by Section 27 of the Nagpur Improvement Trust Act. The plots for residential purpose are also reserved by the Trust for carrying out the purposes of the Act. The disposal of the plots by the Trust is, therefore in pursuance of the provisions of the Act and the scheme framed thereunder. As observed by the Supreme Court in Arnold Rodricks v. State of Maharashtra : [1966]3SCR885 (cit supra) the main idea in framing the present scheme was not to think of private comfort or advantage of the members of the public, but the general public good. The plots for buildings will be disposed of by Nagpur Improvement Trust by sale etc. after they are fully developed. This disposal of the land by the Nagpur Improvement Trust is also with an intention to see that further development of the land and construction of buildings thereon will take place in the direction for which the land is acquired. In this view of the matter, in our opinion, the contention raised by ht petitioners that their land is not required for the purposes of the execution of the scheme is not correct.

14. It is no doubt true that by Annexure F an offer was made to the petitioners by the Trust for accepting 3000 sq. fit. plot for the acquisition of every acre of their land. But this offer was made to them so as to minimise the burden on the public exchequer regarding payment of the compensation of the land. The plots which were offered to the petitioners are fully developed plots to be allotted to them for the execution of and in pursuance of the scheme itself. Therefore, from this mere offer it cannot be said that any of the area of the petitioners' land was not required for the execution of the scheme as such.

15. In the very nature of things when the scheme is framed making a provision of improvement or expansion of the town, the execution of it cannot be left to a private individual and has to be carried out under the control and supervision of the Trust itself. Even if it is assumed that the petitioners were prepared to carryon the development of the area individually so far as their lands are concerned, still it cannot be said that the said lands are not necessary for the execution of the scheme. The very offer made by the petitioners clearly indicates that the land is required for the execution of the scheme, though they want to carry on the execution of the scheme voluntarily so far as their land is concerned. As already indicated such an offer time prior to the filing of the pertain. Even otherwise it is doubtful as to whether such an offer could be accepted on an individual basis leaving the matter of development to the vagaries of the individual when an expansion scheme is to be executed as a whole. An individual; will carry out the development of his own area only thereby doing practically the patchwork which may not be beneficial for the simultaneous execution of the scheme as a whole. The petitioners' lands are comprised in and are duly covered by the scheme. The said lands are not only necessary for the execution of the scheme but are also 'affected' by the scheme as observed by the Privy Council in Trustees for the Improvement of Calcutta v. Chandra Kant Ghosh AIR 1920 PC 51. (Cit. supra).

The lands of the petitioners which are comprised in the scheme will be definitely benefited in every way by the execution of the scheme and would be enhanced in the value by its execution. The petitioners will be getting due compensation for their lands as per the land. But in our opinion they cannot be allowed to reap the additional fruits or benefits arising out of the execution of the scheme, thereby depriving the general public as well as the Nagpur Improvement Trust in the interest of general public and for public good. They cannot be allowed to make a private gain out of such public schemes. If such a course is allowed, it will defeat the very purpose of the Act and the schemes framed thereunder.

16. After reading the scheme as a whole it is quite clear that the present scheme has been framed by the Trust in exercise of their power vested in them under the Act and the acquisition of the lands of the petitioners is also for the purpose of the execution of the said scheme. Therefore, in our opinion, the acquisition of the petitioners lands for the purpose of the execution of the said scheme. Therefore, in our opinion the acquisitions of the petitioners' lands for the purpose of the Street Scheme is fully authorised by the provisions of the Act. itself empowers the Trust to acquire Act itself empowers the Trust to acquire the land for carrying out any of the purposes of the Act. Framing of the schemes under Chapter IV of the Act is in exercise of the power conferred upon the Trust under the Act for carrying out the purpose of the Act itself. In this view of the matter, in our opinion, the present scheme framed by the Trust is perfectly within their power and the proceedings started by the Trust for the acquisition of the petitioners land are also duly authorised by the Act itself. By such schemes it is the general public which is benefited in every way and therefore the acquisition of the petitioners lands is obviously for public public. Once this finding is recorded, in our opinion, the challenge of the petitioners based on Articles 31 and 19(1)(f) of the Constitution of India must fail.

17. In Bachan Singh v. State of Punjab, : AIR 1971 SC2164 while deciding such a challenged to the provisions of Punjab Development of Damaged Areas Act the supreme Court observed as under:

'The provisions of the Act it may be noticed clearly indicate that they are reasonable and are designed to serve the interest of the general public namely to the improvement of the damaged areas of the city of Amritsar. They do not in any way violate the provisions of Art.19(1)(f) and (g).This Court has in no uncertain terms laid down the test for ascertaining reasonableness of the restrictions on the rights guaranteed under Article 19 to be determined by a reference to the nature of the right said to have been infringed, the purpose of the restrictions sought to be imposed of the restrictions sought to be imposed, the urgency of the evil and the necessity to rectify or remedy it all of which has to be balanced with the social welfare or social purpose sought to be achieved. The right of the individual has therefore to be sublimated to the larger interest of the general public. Applying this test it will be seen that persons who are affected by the scheme ....The fundamental rights to acquire, hold or dispose of property or to carry on any occupation, trade or business guaranteed under Articles 19(1) (f) and (g) is subject to the restrictions contained in Clauses (5) and (6) of the said Article. The Act in our view complies substantially if not abundantly with the restrictions imposed on the exercise of the said fundamental rights: These observations aptly apply to the case before us. Therefore, in our opinion, it has not been shown to us that the petitioners property is being compulsorily acquired without an authority of law and the acquisition is not for a public purpose. On the contrary, it is clear to us that the acquisition of the petitioners' land for the Street Schemes is for a public purpose, and is in public interest and the same is fully authorised by the provisions of the Nagpur Improvement Trust Act read with the provisions of the land Acquisition Act, 1894.

18. It was then contended by Mr. Natu that this compulsory acquisition of the petitioners field property amounts to depriving them of their fundamental right to practice, a profession, trade or business of agriculture. It is the contention of Shri Natu cultivates of this agricultural field is the only source of the petitioners livelihood and because of this acquisition this very right to practice their profession or to carry on their trade or business in agriculture is being taken away. He further contend that the said scheme is also not saved by sub-clause (5) of Articles 19 of the Constitution of India as the Scheme framed is not in the interest of general public. It is not possible for us to accept this contention of Shri Nath.

19. By the framing of the scheme the Improvement Trust is not taking away the right of the petitioners to practice any profession or to carry on any trade or business. As a matter of fact, the scheme has nothing to do with any such right of the petitioners to practice any profession of Article 19(1)(g) will not apply. It could at the most be said to be an accidental result of the acquisition of the land of the petitioners for the public purpose, namely for the execution of improvement scheme framed by the Improvement scheme framed by the Improvement Trust under the Act. Even otherwise as observed by the : AIR 1971 SC2164 (cit supra), when the provisions of the Act or a scheme clearly indicate that they are reasonable and are designed to serve the interest of the general public, namely, to execute schemes in a planned manner for the improvement of the city, then they do not in any way violate the provisions of Article 19(1) (f)and (g)of the Constitution of India. The present scheme is in the larger interest of general public and is therefore, in our opinion saved by clauses (5) and (6) of Article 19 of the Constitution of India.

20. Thereafter it was contended by Shri Natu that the rejection of the petitioners application by the Improvement Trust for obtaining their land is discriminatory and is, therefore, violative of their fundaments, right guaranteed under Article 14 of the Constitution of India. In the petition it is contended by petitioners that the Improvement Trust has abandoned some land belonging to one Abdullabhal, though it was comprised in the scheme vide agreement dated 2.1.1967.

21. The contention raised by the petitioners in this behalf is itself not correct in reply to this allegation made in the petition the Trust in its return, has made the whole position clear. The said Abdullabhai has applied on 8.8.1962 that prior to the sanction of the scheme itself by the Government for sanctioning a lay-out of his property. The Trust had passed a resolution sanctioning a lay-out in respect of 12 acres of land only and an agreement was drawn accordingly on 2-1-1967. However, it is contended by the Trust that later on Abdullabhai's entire property namely Khasra Nos. 3/1 4, 5 and 6, was noted for acquisition under Section 45 of the Act and the acquisition proceedings in that behalf had already been started. Therefore, it is not correct to say that the lands belonging to Abdullabhal are not being acquired by the Trust. Against the order passed by the Land Acquisition

Officer proceedings with the acquisition proceedings relating to the lands owned by Abdullabhai, the said landholder has filed a writ petition before this Court, bearing Special Civil Appln. No. 28` of 1969 (Bom). With the consent of the parties were had sent for the records of the said writ petition and have perused them. From the record of the said case it is quite clear that the Trust is proceeding with the acquisition of entire land belonging to Abdullabhai, there is no substance in this contention raised by the petitioners that any discriminatory treatment has been given to them by the Trust.

22. Shri Natu has challenged the section accorded by the State Government being bona fide abuse of the power on the part of the Government According to Shri Natu, the State Government has granted sanction to the scheme mechanically without applying its mind to the scheme itself or the objections raised by the various persons. After preparation and publication of the scheme a notice is published in the Gazette under Section 39 of the Act and a notice of the proposed acquisition is also served upon individual land owner under Section 41 of the Act itself. A draft scheme is also sent to the Municipal Corporation under Section 40 of the Act. Thereafter, after considering the objections raised in this behalf and hearing all the persons making any such objections the trust has to apply to the State Government for sanction of the scheme. Such an application for sanction is to be forwarded to the Government under Section 43 of the Act and the said application is to be accompanied by-

(a) a description of and full particulars relating to, the scheme, and complete plans and estimates of the cost of executing the scheme;

(b) a description of the street, square, park, open space or other land, or any part thereof, which is the property of the Government and managed by the Central Government or the State Government required for the scheme;

(c) a statement of the reasons for any modifications made in the scheme as originally framed;

(d) a statement of objections, if any received under Section 39;

(e) any representation received under Section 40;

(f) a list of the names of all persons, if any, who have dissented under clause (b) of sub-section (2) of Section 41, from the proposed acquisition of their land or from the proposed recovery of a betterment contribution, and a statement of the reasons given for such dissent; and

(g)a statement of the arrangements made or proposed by the Trust for the re-housing of persons likely to be displaced by the execution of the scheme, for whose re-housing provision is required.

Such an application was made by the Trust vide Annexure 5 with the return as per their memo dated 27-11-1964. With this application various documents were sent to the Government and thereafter the Government has sanctioned the said scheme vide Government resolution dated 4-3-1967. Together with the notification sanctioning the scheme the Government had also made certain suggestions to the Trust. These suggestions were in fact made by the Director. Town Planning, Maharashtra State, Poona and were incorporated in the Government resolution dated 4-31967. The said resolution has been made available to us by the counsel for the Trust. if all these documents are read together, in our opinion, it cannot be said that the has not applied its mind to the scheme as such and has granted the sanction to the scheme mechanically without any application of mind. The petitioners have drawn an inference of non-application of mind on the part of the Government from the mere fact that the Government did not even think it necessary to return the scheme for reconsideration as required by Section 44 (1) of the Act. This is the only reason given by the petitioners as to why they feel that the Government has not applied its mind to the scheme as such. From the material placed before us we are satisfied that the sanctioned accorded by the Government is after applying its mind to the scheme and after considering the scheme as well as the relevant documents sent to the Government with the application for obtaining sanction to the scheme itself, Moreover it is not open for this Court to examine this question in view of the provisions of Section 45 (2) of the Act. Section 45 (2) of the Act reads as under:

'45(2) The publication of a notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned'.

23. However, it is contended by Shri Natu that in spite of the said provision it is open for the Court to scrutinise the whole matter and come to a conclusion that the scheme was nt properly sanctioned . In support of this proposition Shri Natu has relied upon two decisions of the Supreme Court. namely R. L. Arora v. The State of Uttar Pradesh AIR 1962 SC 784 and State of West Bengal v. P. N. Talukdar : AIR 1965 SC646 . According to Shri Natu, the said presumption will not mean that the Court was precluded from enquiring as to whether the land, which is being acquired, is in fact needed for a public purpose or not . In State of West Bengal v. P. N. Talukdar (cit. supra) it was observed by the Supreme Court that the Court is not precluded from enquiring whether the notification that the land was needed for the public purpose was made in fraud of the Act, namely, against the proviso to Section 6(1) which required that such a notification could not be made unless part of whole of the compensation came out of public revenues or some fund managed or controlled by a local authority.

24. Shri Natu has also relied upon a decision of Manipur Judicial Commissioner's Court in Heisnam v. Union Territory, Manipur, AIR 1968 Man 45 and Raja Ram v. State of Punjab .

24. Shri Natu has also relied upon a decision of Manipur Judicial Commissioner's Court in Heisnam v. Union Territory, Manipur,AIR 1968 Man 45 and Raja Ram v. State of Punjab .

25. It is not doubt true that in the said decisions a view is taken that a Court decisions a view is taken that a Court can go behind the notification itself if it is issued in the colourable exercise of the power or was a fraud on the Statute itself. Such an allegation has not been made in this petition, when the sanction issued by the Government is being challenged. On the Contrary in Ratilal v. State of Gujarat : AIR 1970 SC984 , while construing the presumption under Section 6(3) of the Land Acquisition act, the Supreme Court observed:

'Section 6(3) of the Land Acquisition Act provides that a declaration under Section 6 shall be conclusive evidence that the land proposed to be acquired is needed for a public purpose. Therefore this Court cannot go into the question whether the need was genuine or not unless we are satisfied that the action taken by the Government was a fraudulent one. We are also unable to concede to the proposition that the need of a section of the public cannot be considered as a public purpose. Ordinarily, the Government is the best authority to determine whether the purpose in question is a public purpose or not and further the declaration made by it under Section 6 is a conclusive evidence of the fact that the land in question is needed for a public purposes see Smt. Somaweanti v. State of Punjab, : [1963]2SCR774 . That decision lays down that conclusiveness in Section 6(3) must necessarily attach not merely to a 'need but also to the question whether the purposes was a public purpose ....

We are unable to accept the contention of the learned counsel for the appellant that the Government did not apply its mind before issuing the notification under Section 6. Before issuing that notification, there was an enquiry under Section 5-A. The Government had issued that notification after examining the port submitted by the concerned officer. There is no material on record from which we can reasonably come to the conclusion that the Government had acted blindly in issuing that notification'.

In our opinion the principles of Law laid down by the Supreme Court in this decision will aptly apply to the present case in view of the fact that sanction granted by the Government is not being challenged before us on the grounds of fraud on that it was issued in colourable exercise of the power. Further in the present case after perusing the application filed by the Trust dated 27-11-1964 submitting the scheme for sanction and after perusing the accompaniments forwarded with the said application the sanction was accorded by the Government and that too with certain suggestions. In this view of the matter, it is not possible for us to accept the contention Shri Natu that the sanction was given by the Government to the present scheme without any application of mind or it amounted to a bonafide abuse of the power on the part of the Government .

26. However a reference was made by Shri Natu to a decision of the Madras High Court in Godrej & Boyce Mfg. Co. Pvt. ltd. v. Special Tahsildar Land Acquisition Industrial Estates : AIR1969 Mad305 . In the said decision the action of the Government was challenged on the ground that it amounted to a bona fide misuse of the power as the decision of the Government that the lands which were in possession of the petitioners and which were sought to be acquired by the Government were far in excess of the petitioners' requirement. It was found by the Madras High Court that the said assumption on the part of the Government was unreasonable in the context of the petitioners' proposed magnitude of business activities, and therefore, the Madras High Court held that though the Government acid bona fide in exercise of its power by virtue of wrong assumption the action of the Government amounted to bona fide misuse of the power. As already found by us, in the present case the sanction was accorded by the Government after applying its mind to the application submitted by the Trust and the accompaniments enclosed therewith and thereafter the said scheme was sanctioned by the Government with certain suggestions. It has not been shown to us that while exercising this power the Government has abused its power either bona fide or mala fide, nor such an inference could be drawn from the facts and circumstances of the present case as disclosed by the record produced before us. In this view of the matter, in our opinion there is no substance in this contention of the petitioners also.

27. These were the only contentions argued before us in Special Civil Application No. 422 of 1970. In the view which we have taken, therefore, Special Civil Application No. 422 of 1970 fails and is dismissed.

28. In Special Civil Application No. 494 of 1970 in addition to the other contentions raised, the petitioner has contended that the application for abandoning the land filed by petitioner under Section 68 of the Act has been rejected by the Trust without giving any opportunity of being heard. The original petitioner in the said case. Baru Bai, owned Khasra No. 94, area 27.36 acres at mouza Chikhali, taluq and district Nagpur and the said land owned by her was also the subject-matter of the acquisition by the Trust for the execution of their scheme, known as Eastern Industrial Area Street Scheme. It is not necessary to refer to the other contentions

raised in the petition as the said contentions are already dealt with by us while dealing with the writ by us while dealing with the writ petition bearing Special Civil application No. 422 of 1970.

29. The only additional contention which is required to be decided in this writ petitioner is regarding the petitioner's claim in the matter of rejection of her application under Section 68 of the Act. The application filed by the petitioner for abandoning her land under Section 68 of the Act was based on the ground that the land should be abandoned as she is also carrying on a private k industry. This was the only claim made by the petitioner in her application for abandonment of the land under Section 68 of the Act.

30. No plea was raised by the petitioner in the said application that the filed owned by her was unnecessary for the execution of the scheme itself. The application filed by the petitioner under Section 68 of the Act was not filed with the writ petition. However, the said application in original was made available to us by the counsel for the Trust. The claim made in the said application by the original petitioner Baru Bai was based on the ground that as she is also carrying on a private industry, her land should be abandoned. As the abandonment of the land from acquisition was not claimed by the original petitioner on the ground that it was subsequently discovered that her land is unnecessary for the execution of the scheme in our opinion, no consideration of the said application was called for. Even in the present petition it has not been demonstrated as to how it was subsequently discovered that the land owned by the petitioner is unnecessary for the execution of the scheme. In the petition the petitioner has also challenged the action of the Trust rejecting her application for abandonment of the filed on the ground that the said order passed by the Trust is mala fide, or is discriminatory as the Trust has abandoned the land belonging to one Abdullabhai. As already observed in the decision in Special Civil Application No. 422 of 1970, the land belonging to Abdullabhai has not been abandoned by the Trust as such. On the contrary the said land is being acquired by the Trust for the purpose of execution of the present scheme itself. In support of the plea raised by the petitioner that the action of the Trust is either mala fide or discriminatory no data has been placed before us in support of the said challenge. In this view of the matter, in our opinion,

the petitioner-landlord was not entitled to any hearing before the said application was decided by the Trust under Section 68 of the Act, having regard to the facts and circumstances of the present case.

31. We are not deciding the general question in the present petitions as to whether it is necessary to give an opportunity of being heard to an application under Section 68 of the Act. In our opinion, having regard to the facts and circumstances of the present case, as the petitioner has not made out any case for abandonment of any portion of his land, it was not necessary for the Trust to give any hearing to the applicant before rejecting the application.

32. It was then contended by Shri Natu that the scheme framed by the Trust is ultra vires of their powers under Section 31 of the Act itself. According to Shri Natu, the present scheme has been framed by the Trust under Section 31 of the Act and Section 31 of the Act makes no provision for acquiring any land for the purposes of construction of factories or light industries. he further contended that Section 31(2) does not provide that it is open for the Trust to acquire the land affected by the scheme itself. According to Shri Natu, in a Street Scheme no provision could be made for acquisition of a land for the purpose of industries or for acquiring of the scheme itself. It is not possible for us to accept this contention of Shri Natu.

33. In our opinion, the provisions of Section 31 of the Act will have to be read together with other provisions of Chapter IV of the Act. The said Chapter will have to be harmoniously construed and if all the provisions of the said Chapter and the Act are read together, in our opinion, even to a scheme framed under Section 31 of the Act the provisions of Section 26 will apply. Section 26 of the Act is a general provision and makes a provisions for the acquisition of the property which is necessary for or affected by the execution of the scheme itself. The land of the petitioner which is being acquired for the execution of the scheme is necessary for the execution of the scheme itself or in any case is affected by the execution of the scheme. Therefore, in our opinion, the acquisition of the land belonging to the petitioner was in accordance with the provisions of the Act and was fully authorised. Section 27 of the Act lays down the types of improvement schemes

and further permits the trust to frame a scheme which might be a combination of any two or more of such types of schemes. Section 31 specifically provides for framing of a scheme which might include a provision for building sites. The term 'building' has been defined by the Act meaning thereby a house, hut, shed or other structures for whatever purpose and of whatever material constructed and every part thereof, whether used as a human habitation or not, and includes well, latrine, drainage work, fixed platform, varandah, plinth, doorstep compound wall, fencing and the like, and any work connected there with. The construction of a shed or structure for the purposes of a factory or industry will definitely amount to construction of a building within the meaning of the Act and in our opinion is covered by the definition of the said term as defined by Section 2 (a-1) of the Act. Therefore, in our view, it is open for the Trust to frame a scheme for providing building sites for the purposes of industries also. Framing of a scheme to provide for an accommodation for the purposes of industries and factories is a part and parcel of the improvement scheme contemplated by Chapter IV of the Nagpur Improvement Trust Act for the improvement and expansion of the town. Such a scheme will meet the general needs of the population in this behalf and will also provide for other public amenities and the sites therefore. In this view of the matter it is nt possible for us to accept this contention of Shri Natu.

34. Therefore, in the view which we have taken Special Civil Application No. 494 of 1970 also fails and is dismissed.

35. The petitioner in Special Civil Application No. 515 of 1970 is an owner of khasra Nos 62/1 and 64, which are also included in the scheme known as Eastern Industrials Area Street Scheme. The petitioner Punjaram had also filed an application under Section 68 of the Act on the ground that the land belonging to him is not required for the execution of the scheme, and therefore, is liable to be abandoned. The petitioner in this behalf has filed two application dated 29-12-1967 and 6-3-1963. In these applications the petitioner has contended that his filed property or any part there applications the petitioner has contended that his filed property or any part thereof does not come within the Trust scheme. In the second application it was stated by him that it was learnt by him that his house or some part of it is not required for the execution of the Trust scheme and if so it be

abandoned. From the bare reading of the application it is quite clear that apart from making a bare statement no specific case was made out by the petitioner for abandonment of his property, nor it was shown that it was subsequently discovered that his property is unnecessary for the execution of the scheme itself. Having regard to the averments made in the applications in our opinion, therefore, it was not necessary for the Trust to give any hearing to the petitioner before deciding the said applications. The only contention raised in the present petition on behalf of the petitioner was that the order passed by the Trust rejecting his applications for abandonment of the property was illegal as no hearing was given to him before passing of the said order. As observed by the Supreme Court in Nagpur Improvement Trust v. Ganesh Kulkarni, : [1973]3SCR39 before an applicant can make an application under Section 68(1) of the Act, it must be proved, that he acquisition of the land comprised in the Improvement Scheme has been subsequently discovered to be unnecessary for the execution of the scheme itself .this aspect of the matter was also considered by the supreme court in narain doss v. the improvement trust amritsar : AIR 1972 SC865 . while dealing with some what identical provisions of the Punjab town improvement act, in the side decision it observe by the supreme court as order the basic question which , in our options, initially requires consideration is the nature of the right which the appellants claim to vest in them by virtue of the section 56 of the act , this section occurs in chapter VI of the act ,that chapter deals with Acquisition, Tribunals and applications of the Act to other authorities.' Section 56 with which this Chapter begins provides for 'Abandonment of acquisition in consideration of special payment and it reads:.... .... It is obvious that this section contemplates a locality comprised in a scheme under the Act pursuant to which the Government has sanctioned the acquisition of land, which land is subsequently discovered to be unnecessary after the sanction of the acquisition that its owner or any person having an interest therein is entitled to make an application to the Trust requesting for the abandonment of its acquisition in consideration of payment by him of a sum to be fixed by the Trust in that behalf. In other words, it is when this initial condition is satisfied that the location for making an application for abandonment arises. The further requirement of this section is that the application for abandonment must reach the Trust before the time fixed by the Collector under section 9 of the Land Acquisition Act, 1894 for making claims in conditions are complied with then the Trust is bound to admit the application so made if the applicant either owns the lands in question or is a mortgagee or a lessee thereof with an unexpired lease period of seven years. When however such an application is made by some other persons having an interest in the land, the Trust may admit it in its discretion. It is noteworthy that unless the acquisition of land is discovered to be unnecessary for the execution of the scheme this section does not operate and there is no question of the Trust may admit it in its discretion. It is noteworthy that unless the acquisition of land is discovered to be unnecessary for the acquisition execution of the scheme this section does not operate and there is no question of the Trust possessing any power to except lands from the scheme under this Section. This existence of an orchard on such land which is not necessary for the execution of the scheme would be a wholly irrelevant consideration. In the present case there is no finding, that the acquisition of the appellants' land has been discovered to be unnecessary for the execution of the scheme. Therefore, the appellants had no locus stand to invoke Section 56.'

As no case was made out by the petitioner for entertaining his applications under Section 68 itself, in our opinion, having regard to the facts and circumstances of the present case it was not obligatory on the part of the Trust to give any hearing to the petitioner before his applications were rejected. This was the only point argued in this writ petition.

36. In the result, therefore, Special Civil Applications No.515 of 1968 fails and is dismissed.

37. However, in the circumstances of the cases there will be no order as to costs in all these writ petitions.

38. Petitions dismissed.