Adil Singh Vs Uoi and ors.

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Court : Delhi

Decided On : Aug-09-2010

Judge : Mr. Badar Durrez Ahdmed ; Ms. Veena Birbal ,. J J.

Appeal No. : WP(C) 2948/2007

Appellant : Adil Singh

Respondent : Uoi and ors.

Advocate for Def. : Mr A. S. Chandhiok, Mr Sachin Datta, Ms Vibha Dhawan , Ms Madhu Panjwani, Mr Tarun Johri, Mr Chetan Sharma, Sr, Mr Samit Khosla, Advs.

Advocate for Pet/Ap. : Mr Ajoy B. Kalia, Adv.

Judgement :

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest

ORDER

1. The main question which arises for consideration in this writ petition is whether the erstwhile owners of land, which was acquired for one particular public purpose but was not fully utilized for such purpose, can claim that the unused land be

returned to them?

2. In the present case, the petitioner was the 50% owner of the perpetual leasehold rights in plot No. 2, Block No. 125 also known as 8 Jantar Mantar Road, admeasuring approximately 10,800 sq. mts. By a notification dated 31.03.2000 issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) it was notified that the aforesaid 10,800 sq. mts. of land compromised in the said property was likely to be required to be taken by the Government at public expense for the public purpose of "traffic integration and intake shaft for underground metro at Patel Chowk, MRTS Station" and that the leasehold rights of land in the said property was likely to be acquired for the said purpose. The said notification also indicated that the Lieutenant Governor, Delhi was satisfied that the provisions of Section 17(1) of the said Act were applicable to the land in question and was further pleased to direct under Section 17(4) of the said Act that all the provisions of Section 5A of the said Act would not apply.

3. Thereafter, the declaration under Section 6 of the said Act was notified on 23.05.2000. In July, 2000 the petitioner herein along with the respondents 3 and 4 (who were co-owners) filed a writ petition being WP(C) 1850/2000 in this Court, challenging the said notifications. The main point of challenge was the invocation of Section 17 and the doing away with the provisions of Section 5A of the said Act. It is an admitted position that WP(C) 1850/2000 was sought to be withdrawn without any condition or liberty and the same was dismissed as withdrawn, as such, on 21.09.2000. Possession of the said land was taken by Delhi Metro Rail Corporation (DMRC) (respondent No. 2 herein) on 03.10.2000. The Land Acquisition Collector made his Award No. 13/2001-02 in respect of the said acquisition and directed the payment of compensation to the owners of the said land to the extent of Rs 27.86 crores. The petitioner along with the other co-owners, being dissatisfied with the amount of compensation awarded, filed reference petitions under Section 18 of the said Act for enhancement of compensation. Those references are yet to be decided.

4. In the meanwhile, on 02.04.2007, DMRC took out a tender notice which carried the heading "Opportunity to Build & Operate Five Star Hotel in the Heart of Delhi

property development at 8, Jantar Mantar near Patel Chowk MRTS Station". The tender notice stated that as a part of its ongoing efforts to generate resources for part financing the MRTS project, through property development, DMRC has identified a parcel of land at 8, Jantar Mantar adjacent to Patel Chowk MRTS Station measuring 10,800 sq. mts. (approximately) for commercial development as a five star / business hotel. Sealed bids/ tenders were invited from eligible developers or interested bidders for property development at 8, Jantar Mantar on concession basis for a period of 30 years. It was also indicated that the selected concessionaire would construct, operate and maintain a five star/ business hotel for the concession period of 30 years. The application procedure was that the interested and eligible applicants could obtain the "request for proposal" (RFP) document on payment of a non-refundable fee of Rs 10,000/- by demand draft/ pay order drawn on any scheduled commercial bank. The sale of the RFP document was to begin on 02.04.2007 and end on 25.04.2007. The last date for submission of queries in writing was to be 11.04.2007 and the pre-bid meeting was to be held on 10.04.2010. The last date for submission of completed and duly filled RFP document was 26.04.2007 at 1500 hrs IST and the technical bids were to be opened on 26.04.2007 at 1530 Hrs IST.

5. The RFP document gave the details of the site in paragraph 1.3 thereof. Paragraph 1.3.1 of the said document indicates that the site is located at 8, Jantar Mantar, near Patel Chowk Metro Station. It is further stated that the site, flanked by the prominent metro stations of Rajiv Chowk and Central Secretariat, is close to the business hub at Connaught Place. Paragraph 1.3.2 of the RFP document further reveals that the site is located in the heart of the city and that the total area of the plot is 10,800 sq. mts. and the area identified for property development is 8386.6 sq. mts.

6. In paragraph 1.3.13 of the RFP document it is further indicated that the plot of land had been handed over to DMRC on 14.08.2003 and that, earlier, the property was a private property called 8, Jantar Mantar. It is further stated that the Government of National Capital Territory of Delhi had issued a general letter permitting DMRC to carry out property development in all lands allotted to it. It is also revealed that in terms of the approval letter dated 21.07.2003, DMRC had

been permitted by the Ministry of Urban Development, Government of India to raise funds for phase-I of the Delhi Mass Rapid Transit System by undertaking property development in respect of the allotted lands.

7. Paragraph 1.3.22 of the RFP document sets out a table indicating the development parameters which needed to be followed by the bidders. In this table the extent of land acquired under the said Act was shown to be 10,800 sq. mts. and the total site area excluding existing structures on the surface was indicated to be 8386.6 sq. mts. This was the area available for property development.

8. According to the petitioner, the aforesaid tender notice and the RFP document clearly indicate that though the land acquired was to the extent of 10800 sq. mts. approximately, DMRC had used only 2413.4 sq. mts. for the purpose of traffic integration and intake shaft for underground metro at Patel Chowk, MRTS Station which was the avowed public purpose behind the acquisition. In other words, land to the extent of 8386.6 sq. mts. was not utilized for the said public purpose.

9. After the said tender notice dated 02.04.2007 was published in the newspapers, the petitioner filed the present writ petition, inter alia, seeking the quashing of the tender notice dated 02.04.2007 as also the letter dated 21.07.2003 whereby DMRC was permitted to commercially develop the property. A prayer was also made for quashing of the Section 4 notification under the said Act and the acquisition proceedings pursuant thereto relating to the unused area of 8386.6 sq. mts. A prayer has also been made for the issuance of a writ of mandamus directing DMRC (respondent No. 2) to handover physical possession of the unused portion of land measuring 4193.3 sq. mts. (being the 50% share of the petitioner in the unused land measuring 8386.6 sq. mts.) to the petitioner. An alternative prayer was also made that DMRC (respondent No.2) be directed to enter into the proposed concession agreement as indicated in the tender notice with the petitioner.

10. Subsequent to the filing of the said writ petition and during its pendency, the proposal for the said five star hotel being established on the land in question was dropped by DMRC. The plea of the petitioner now is that only a small portion of land (approximately 2413.4 sq. mts.) was actually required by DMRC yet the entire

land measuring 10800 sq. mtr. was acquired from the petitioner and the other co-owners by the respondents 1 and 2 with the intent to defraud and cheat them by depriving them of their residential house with the object of commercially exploiting the same with private entrepreneurs and to earn huge profits. It was contended on behalf of the petitioner that the Union of India and DMRC had committed a fraud and breach of trust and had misrepresented to the petitioner and the other co-owners that the property in question was required for a public purpose when the actual intention was to use the same for a commercial purpose. It was also contended that land could be acquired under the said Act only for a public purpose and if land is acquired for reasons which do not fall within the ambit of a public purpose, the acquisition would, to that extent be void. Consequently, since land to the extent of 8386.6 sq. mts. was admittedly available for development as indicated in the said tender notice, land to that extent was not utilized for the public purpose for which it was said to have been acquired. Therefore, it was contended that the said land measuring 8386.6 sq. mts. be returned to the petitioner and the co-owners. An offer was also made by the petitioner that it was willing to buy-back the said land at the rate of compensation awarded by the Land Acquisition Collector. It was also contended on behalf of the petitioner that in terms of Section 40 of the said Act land cannot be acquired for a company unless and until any one of the conditions given in the said Section are met. In this context, it was submitted that in the present case, none of the conditions specified in Section 40 have been satisfied and, therefore, the acquisition in respect of the unused 8386.6 sq. mts. of land was clearly bad and the property was liable to be returned to the petitioner and the co-owners. The learned counsel for the petitioner placed reliance on the following decisions:- (1) State of Punjab & Anr v. Gurdial Singh & Ors: (1980) 2 SCC 471;

(2) Vyalikaval Housebuilding Coop. Society v. V. Chandrappa & Ors : (2007) 9 SCC 304;

(3) Collector (District Magistrate) Allahabad & Anr v. Raja Ram Jaiswal: (1985) 3 SCC 1;

(4) Essco Fabs Private Limited and Ors v. State of Haryana and Anr: (2009) 2 SCC 377; and

(5) Hindustan Petroleum Corporation Ltd v. Darius Shapur Chenai and Ors: (2005) 7 SCC 627.

These decisions were cited by the learned counsel for the petitioner in support of the propositions that if there is a fraud on power, the order passed in exercise of the power would be vitiated. In the context of land acquisition, a fraudulent exercise of power would vitiate the acquisition. It was also contended that public purpose cannot be used as a cloak for private satisfaction and that an acquisition, if it is tainted, cannot be validated even if there was delay in approaching the court or acquiescence on the part of the owners. It was also contended that power conferred for a particular purpose can be exercised only for that purpose and none other. In other words, it was submitted that where the acquisition was for a particular purpose, the exercise of power for acquisition would be valid only to the extent of the said purpose. The acquisition would be invalid in respect of any other purpose. It was also contended that the existence of a public purpose was an essential condition for acquisition of land. This was, of course, coupled with the other requirement that when land is acquired, the erstwhile owner is reasonably compensated for the same. It was also submitted that the State is not the sole judge of what is or what is not a public purpose and the determination of public purpose is always subject to judicial review.

11. On the other hand, the learned counsel appearing on behalf of DMRC submitted, in the first instance, that the petitioner cannot be allowed to re-agitate an issue which he had willfully given up. This submission was made in the context of the earlier writ petition [WP(C) 1850/2007] which was dismissed as withdrawn on 21.09.2000 and no liberty was granted to the petitioner to file any other writ petition or proceeding. It was contended that the allegations contained in the earlier writ petition were almost the same as those in the present writ petition. There were allegations that DMRC intended to construct a multi-storied commercial complex in the property and that the government actually intends to exploit the property for commercial purpose. It was also alleged in the earlier writ

petition that there was no public purpose behind the acquisition and it was only for raising revenues. Allegations of colourable exercise of power as well as mala fides had also been levelled in that writ petition. It was thus contended by the learned counsel for the respondent No. 2 (DMRC) that the earlier writ petition was not only directed against the order under Section 17 of the said Act and the doing away with the applicability of the provisions of Section 5A of the said Act but was also against the alleged colourable exercise of power, which is the very same plea taken in the present writ petition. It is in this background that the learned counsel for DMRC submitted that once the earlier writ petition had been dismissed as withdrawn on 21.09.2000, the petitioner cannot be permitted to re-agitate those very issues in the present petition.

12. The next plea taken by the learned counsel for DMRC was that, in any event, after the passing of the Award and handing over of possession, the property had vested in the State and there could be no challenge to the acquisition. There was also no question of the property reverting to the previous owners from whom the same had been acquired after following the due procedure established under the said Act.

13. The third plea was that the public purpose of acquisition had been adequately met and the future use of the said land was also for a public purpose inasmuch as it was permissible for DMRC to raise revenues from property development in order to finance the metro rail project. Consequently, it was submitted that the property development in this case would fall within the ambit of public purpose. It was also contended that, in any event, the proposal for developing a five star hotel on the land in question had been dropped.

14. The learned counsel for DMRC placed reliance on the following decisions:-

(1) Gulam Mustafa & Ors v. The State of Maharashtra & Ors: (1976) 1 SCC 800;

(2) Govt. of A.P and Anr v. Syed Akbar: (2005) 1 SCC 558;

(3) Union of India & Ors v. Jaswant Rai Kochhar & Ors: (1996) 3 SCC 491;

(4) Ram Lal Sethi & Anr v. State of Haryana & Ors.: (1990) Supp. SCC 11;

(5) Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Private Ltd: (1996) 11 SCC 501; (6) Bangalore Development Authority & Ors v. R. Hanumaiah & Ors: VII (2005) SLT 595;

(7) Pratibha Nema & Ors v. State of M.P. & Ors: (2003) 10 SCC 626; and

(8) Forward Construction Co. and Ors v. Prabhat Mandal: (1986) 1 SCC 100.

15. These decisions were relied upon by the learned counsel in support of his contentions that once the original acquisition is valid and title has vested in the acquiring authority, the manner in which the excess land is used thereafter is of no concern of the original owner and, in any event, cannot be the basis for invalidating the acquisition. It was also submitted that after a public purpose is achieved and there is still some land left over, the same can be used for another public purpose and such a change of use would not invalidate the acquisition. It was also contended that once possession has been taken and the land has vested in the State, even the State cannot direct a re-conveyance of the property to the original owner. In the context of a distinction between an acquisition under Part II and part VII of the said Act, it was submitted that acquisition under both the parts would be for a public purpose and the real distinction was only in the source of funds. It is only where the acquisition was for a company and its cost was to be met entirely by the company itself that the provisions of part VII would apply and not otherwise. In other words, it was submitted that where an acquisition was even partly funded by the State, it would not be an acquisition under part VII of the said Act. In this backdrop it was submitted that in the present case the acquisition was funded by the State, therefore, the provisions of part VII, which were relied upon by the learned counsel for the petitioner, would not apply. It was also contended that the present acquisition was not for a company but for the metro rail system.

16. Mr Chetan Sharma, the learned senior counsel appearing on behalf of the respondents 3 and 4 (co-owners), supported the petition and the contentions raised by the counsel for the petitioner.

17. The learned counsel for the Union of India supported the acquisition and made the further submission that the petitioner and the other co-owners merely had

leasehold rights and that the moment the notifications under Sections 4 and 6 of the said Act were issued, the lease stood determined. The arguments of the learned counsel for DMRC were adopted by the learned counsel for the Union of India in support of the acquisition.

18. An additional affidavit of Mr N.P. Singh, General Manager / Legal dated 03.11.2009 was filed on behalf of DMRC. In the said affidavit, it was stated that the land in question was acquired for the traffic integration and construction of intake shaft of the Metro Patel Chowk Station and that the said land was utilized for the said purpose and an underground station had been constructed beneath the land in question along with underground tunnels. It is further stated that during the construction phase, almost the whole of the land in question was required for the digging process, tunneling process, for mobilization of the machinery at the site, for setting up of the batching plant, for excavation work etc. which was carried out on the land in question for a period of more than three years. The affidavit further indicates that a large portion of the land in question had been directly used for the construction of the service building of the Patel Chowk MRTS Station and a substantial portion of the underground station itself occupies almost half the length of the land. It is also stated that the metro tunnels pass below the land surface and run right across it. Furthermore, parking of commuter cars is also done on a substantial part of the land. More importantly, it was stated that the land in question was almost entirely excavated to a depth of 15 mts for lowering of the tunnel boring machines and tunneling operations between the year 2002 to 2005 and thereafter the excavation was back-folded. The said affidavit further reveals that DMRC is proposing to build a commercial / office building, as permissible under the prevailing building bye-laws, and that part of the floor space thus constructed would be utilized by DMRC for its operational requirements and the balance floor space is proposed to be rented out commercially for earning revenue for the Mass Rapid Transport System (MRTS) project. The additional affidavit goes on to state that in the event DMRC is not able to raise revenues through property development, the project funds would fall short to that extent and would have to be provided by the government / public exchequer. It is further stated that deprivation of the recurring income would affect DMRCs operations and fare structure adversely and could compel DMRC to increase the fares charged from

commuters.

19. In the said affidavit, it is further stated that the Government, while sanctioning Phase-I of the DMRC project, had also mandated use of the property development revenue for supplementing the regular income of the fare box collections with the objective to keep the fare structure at an affordable level for the public. It was also stated that 65% of the cost of Phase-I had been provided through borrowed funds and DMRC is required to pay the debt amounting to Rs 6861 crores from the total income generated from all the activities and that the income from property development activities would also be utilized for the purposes of repayment of the said debt. It was also stated in the said affidavit that the funding of the metro rail system through property development of the area acquired and handed over to the DMRC is by itself a public purpose as it would facilitate the construction and operation of an environment friendly and economic means of transport for the general public.

20. Finally, in the said affidavit, it was stated that a Presidential order / sanction had been issued by the Ministry of Urban Development on 30.03.2009 stating that property development by DMRC on acquired land shall also be considered as part of the project and that the word project would also include "property development". On the basis of the facts stated in the aforesaid affidavit, it was contended on behalf of DMRC that utilization of the balance land for the purposes of constructing a commercial office building was itself a public purpose and that by virtue of the Presidential order / sanction, property development by DMRC on acquired land was, in any event, to be considered as part of the project. It was, therefore, submitted that the land in question was acquired for a public purpose and, though the nature of the public purpose may have changed in respect of a portion of the land, it is still being utilized for a public purpose and there was no illegality in this.

21. Since a reference to the Presidential order / sanction dated 30.03.2009 has been made in the said affidavit, it would be necessary to set out the relevant portions thereof here in below:-

"No.K-14011/8/2000-MRTS Government of India Ministry of Urban Development (M.R.T.S. Cell)

Nirman Bhawan, New Delhi

Dated, 30th March, 2009

ORDER

Sanction of the President was earlier accorded for investment approval in Delhi Mass Rapid Transit System (MRTS) Phase I and subsequently in Delhi MRTS Phase II vide orders dated 12.11.1996 and 30.03.1996 respectively, which inter alia provided for property development by Delhi Metro Rail Corporation (DMRC) Ltd. As one of the accepted modes of resource mobilization towards capital cost as well as sustainable operations.

2. Property Development by Metro projects is in line with the global examples as Metros are highly capital intensive projects and the only way they can remain financially healthy, without Government subsidies, is to increase the non-operational revenues i.e. revenues from advertisements, retaining, real estates at Metro stations and outside and parking lot revenues to the extent of 40-50% of the total revenues as in the case of Hong Kong Metro. These commercial activities apart from enhancing the appearance and ambience of the stations, attract more commuters to the metro system, improving ridership and assisting in traffic integration. However, because of restrictive conditions in the allotment letter, DMRC has not been able to pursue its property development initiatives at the required pace.

3. In order to facilitate the property development proposals of DMRC and to undertake certain safeguards to ensure that while maximizing revenue generations, the land / property also reverts to government / DMRC after a specified period, sanction of the President is hereby accorded for implementation of the following guidelines with immediate effect:-

i) Property development shall be undertaken only on lease / sublease / licence / concession basis and not on free hold basis;

ii) While notifying land acquisition, the aspect of property development would also be suitably taken care of;

iii) The restrictive conditions of the land allotment viz. the allote will use the land only for the purpose for which it has been allotted and not for any other purpose shall be amended / modified to the extent that "DMRC is also authorized to lease / sublease / licence /concession the land for raising revenue from the property development";

iv) Raising resources through property development is one of the ways of mobilizing resources for the project. Therefore, the word "project" would also include "property development".

v) Property development on acquired land shall also be considered as part of the "Project".

xiii) While undertaking property development, DMRC shall ensure that only those property development which will fetch maximum revenue on a sustainable basis is undertaken.

4. This issues after consultations with Internal Divisions vide their Dy. No.243/D-2/FD/09 dated 20.03.2009. (S.K. Lohia) Officer on Special Duty (MRTS)"

22. With regard to the said Presidential order / sanction dated 30.03.2009, the learned counsel for the petitioner, in rejoinder, submitted that the said order does not relate to private land and is only limited to Government lands. He submitted that if it related to private lands, then any property could be acquired to fund Government projects and that would be clearly unreasonable and arbitrary.

23. The scheme of the said Act is that Part I, which comprises of Sections 1 to 3, deals with preliminary issues; Part II deals with acquisition and comprises of Sections 4 to 17; Part III relates to reference to court and the procedure to be followed thereon and contains Sections 18 to 28A; Part IV, which comprises of Sections 29 and 30, deals with apportionment of compensation; Part V is concerned with the payment of compensation and comprises of Sections 31 to 34; Part VI deals with temporary occupation of land and comprises of Sections 35 to 37; Part VII, which comprises of Sections 38A to 44B, provides for the acquisition of land for companies; and Part VIII deals with miscellaneous matters and

comprises of Sections 45 to 55.

24. Public purpose has been defined in Section 3(f) in the following manner:- "(f) The expression " public purpose" includes

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of security further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a Corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the Appropriate Government, by a local authority or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a Co-operative society within the meaning of any law relating to co- operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme or development sponsored by Government, or, with the prior approval of the Appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies."

25. The preliminary notification prior to acquisition of any land is issued under Section 4 of the said Act. Section 5A provides that any person interested in any land, which has been notified under Section 4(1), may object to the acquisition and that the objections should be made to the Collector in writing and that the Collector is required to give the objector an opportunity of being heard before he makes a recommendation to the appropriate Government with regard to the proposed acquisition. However, the provisions of Section 5A can be directed not to apply to a particular acquisition in terms of Section 17(4) of the said Act in case the appropriate Government is of the opinion that there is urgency or sudden change as indicated in Section 17(1) and (2) of the said Act. Where such a direction is issued under Section 17(4) of the said Act, a declaration under Section 6 in respect of the land in question could be made at any time after the date of the publication of the notification under Section 4(1) of the said Act. In the present case, we have already mentioned that a direction under Section 17(4) of the said Act was issued and consequently the provisions of Section 5A were not to apply to the land in question. Consequently, the declaration that the land is required for a public purpose under Section 6 of the said Act was issued shortly thereafter on 23.05.2000. Another fall out of the invocation of the provisions of Section 17 of the said Act is that in terms of sub-section (1) thereof, in cases of urgency, whenever the appropriate Government so directs, the Collector, though no award has been made, may, on the expiration of 15 days from the publication of the notice mentioned in Section 9(1), take possession of any land needed for a public purpose. Section 17(1) further stipulates that such land thereupon vests absolutely in the Government, free from all encumbrances. In the present case, since Section 17(1) was invoked, possession of the land in question was taken on 03.10.2000 prior to the making of the award. Under the said Act, the acquisition proceedings continue thereafter and an inquiry is conducted by the Collector and the award is made by him under Section 11 of the said Act. In the normal course, possession is taken after the Collector makes the award. This is provided in Section 16 of the said Act. It stipulates that when the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. However, as we have noted above, possession of the land in question can be taken even prior to the making of the

award whenever the special powers in case of urgency as provided in Section 17 of the said Act are invoked. In the present case, possession was taken in exercise of the special powers specified in Section 17 of the said Act. Thus, it could be said that on and from 03.10.2000, the date on which the possession was taken from the petitioner and the other co- owners, the land vested absolutely in the Government, free from all encumbrances.

26. In case any person does not accept the award made by the Collector, he may require the matter to be referred by the Collector for the determination of the court, whether his objections be to the measurement of the land, the amount of compensation, the person to whom it is payable or the apportionment of the compensation amongst the persons interested. This reference to court is provided in Section 18 of the said Act. In the present case, we have noted that the petitioner and the other co-owners had separately applied for making of a reference to the court as they were dissatisfied with the award. That determination is still pending.

27. We also need to examine some of the provisions of Part VII of the said Act which relates to acquisition of land for companies. Section 39 specifically stipulates that the provisions of Section 6 to 16 (both inclusive) and Sections 18 to 37 (both inclusive) shall not be put in force in order to acquire land for any company under Part VII unless the previous consent of the appropriate Government has been taken and unless the company in question has executed the agreement as provided in Section 41. Section 40 stipulates that the consent of the appropriate Government shall not be given unless and until the appropriate Government is satisfied either on the report of the Collector under Section 5A(2) or by an enquiry held that (a) the purpose of the acquisition is to obtain land for the erection of dwelling- houses for workmen employed by the company or for the provision of amenities directly connected therewith, or (b) such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or (c) such acquisition is needed for the construction of some public work and that such work is likely to prove useful to the public. 28. Section 48, which is the last provision which we need to refer to, is of material importance and, therefore, is set out hereunder:- "48. Completion of acquisition not

compulsory, but compensation to be awarded when not completed.

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings the reunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provision of part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

29. From the brief survey of the provisions of the said Act, it is apparent that the land can be acquired by the appropriate Government whenever it is needed for a public purpose. Such acquisitions are dealt with under Part II of the said Act. Land can also be acquired for a company as defined in Section 2(e) of the said Act in order to fulfill specific objectives as indicated in Section 40 which falls in Part VII of the said Act. It was a contention raised on behalf of the petitioner that in the present case, the land was acquired under Part VII for and on behalf of the DMRC without following the procedure of obtaining previous consent and enquiry as stipulated in Sections 39 and 40 of the said Act. We may point out straightaway that we do not agree with this contention. The acquisition was by the Government of NCT of Delhi under Part II of the said Act and was not an acquisition of the nature falling within Part VII of the said Act. The land had been acquired for the public purpose of traffic integration and intake shaft for the underground metro at Patel Chowk, MRTS Station. In the present writ petition, the petitioner has only challenged that part of the acquisition which relates to the so-called unused land and has not challenged the entire acquisition as such. In other words, the petitioner himself has accepted and admitted that to the extent of 2413.4 sq. mts., the acquisition was valid and was for a public purpose. That being the position, the petitioner cannot now take the ground that the acquisition was bad because it was

an acquisition under Part VII of the said Act and the procedure prescribed therein with regard to previous consent and previous enquiry stipulated in Sections 39 and 40 had not been followed.

30. We may also point out that the Supreme Court in Pratibha Nema (supra), a decision cited by the learned counsel for the DMRC, made it clear that the real distinction between acquisition under Part II and Part VII of the said Act is not in the element of public purpose, but in the source of funds. The Supreme Court clearly indicated that any acquisition, which is even funded in part by the State, would fall under Part II and not under Part VII. The Supreme Court made it clear that it is only where the acquisition is for a company and its cost is to be met entirely by the company itself that the provisions of Part VII would apply. This being the position in law, the acquisition in question cannot be construed as one under Part VII of the said Act inasmuch as the same has been funded by the appropriate government.

31. We shall now examine the case law cited by the counsel for the parties. In State of Punjab v. Gurdial Singh (supra), the Supreme Court observed that fraud on power voids the order if it is not exercised bona fide for the end designed and that a fraud on power vitiates the acquisition itself. It was also observed that where a particular land is acquired for an ostensible public purpose, but is shown not to be the goal pursued, but for the private satisfaction of wreaking vengeance, the acquisition would be bad inasmuch as the moving consideration for acquisition of the particular land would not be for a public purpose, but would be for an extraneous one.

32. In Vyalikaval Housebuilding Coop. Society (supra), a decision strongly relied upon by the learned counsel for the petitioner, the Supreme Court observed that:-

"8. when the acquisition has been found to be totally mala fide and not for bona fide purpose, the ground of delay and acquiescence in the present case has no substance. Learned Counsel for the appellant tried to persuade us that as the amount in question has been accepted by the respondents, it is not open for them now to wriggle out from that agreement. It may be that the appellant might have tried to settle out the acquisition but when the whole acquisition emanates from the aforesaid tainted notification any settlement on the basis of that notification cannot be validated. The fact remains that when the basic notification under which the present land is sought to be acquired stood vitiated then whatever money that the appellant has paid, is at its own risk. Once the notification goes no benefit could be derived by the appellant. We are satisfied that issue of notification was mala fide and it was not for public purpose, as has been observed by this Court, nothing turns on the question of delay and acquiescence. "

33. In Collector (District Magistrate) Allahabad & Anr.(supra), the Supreme Court, inter alia, held as under:-

"25. It is well-settled that where power is conferred to achieve a certain purpose, the power can be exercised only for achieving that purpose. Section 4(1) confers power on the Government and the Collector to acquire land needed for a public purpose. The power to acquire land is to be exercised for carrying out a public purpose. If the authorities of the Sammelan cannot tolerate the existence of a cinema theatre in its vicinity, can it be said that such a purpose would be a public purpose May be the authority of the Sammelan may honestly believe that the existence of a cinema theatre may have the pernicious tendency to vitiate the educational and cultural environment of the institution and therefore, it would like to wish away a cinema theatre in its vicinity. That hardly constitutes public purpose. We have already said about its proclaimed need of land for putting up Sangrahalya. It is an easy escape route whenever Sammelan wants to take over some piece of land. Therefore, it can be fairly concluded that the Sammelan was actuated by extraneous and irrelevant considerations in seeking acquisition of the land the statutory authority having known this fact yet proceeded to exercise statutory power and initiated the process of acquisition. Does this constitute legal mala fides ?

26. Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context 'in good faith' means 'for legitimate reasons'. Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and

the exercise of power is vitiated. If the power to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides. In such a situation there is no question of any personal ill-will or motive. In Municipal Council of Sydney v. Compbell [1925] A.C. 338 it was observed that irrelevant considerations on which power to acquire land is exercised, would vitiate compulsory purchase orders or schemes depending on them. In State of Punjab v. Gurdial Singh and Ors.: 1980 (2) SCC 471 acquisition of land for constructing a grain market was challenged on the ground of legal mala fides. "

34. The learned counsel for the petitioner also placed reliance on Essco Fabs Private Ltd (supra), wherein the Supreme Court, inter alia, held as under:-

"38. We find considerable force in the above argument of the learned Counsel for the appellants. The scheme of the Act is clear which provides for issuance of preliminary notification under Sub-section (1) of Section 4 of the Act empowering the appropriate Government to issue such notification for acquisition of land needed or likely to be needed for any public purpose. Since the property belongs to a private individual, unless there is a `public purpose' as defined in Clause (f) of Section 3 of the Act, no acquisition of land can be made."

35. Finally, the learned counsel for the petitioner placed reliance on Hindustan Petroleum Corporation Ltd (supra). In that decision, the Supreme Court observed as under:-

"6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution of India, the State in exercise of its power of 'eminent domain' may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid.

7. Indisputably, the definition of public purpose is of wide amplitude and takes within its sweep the

acquisition of land for a corporation owned or controlled by the State, as envisaged under Sub-clause (iv) of Clause (f) of Section 3 of the Act, But the same would not mean that the State is the sole judge therefore and no judicial review shall lie. [See Jilubhai Nanbhai Khachar and Ors. v. State of Gujarat and Anr.: 1995 Supp (1) SCC 596."

36. We find that these decisions bring out the well-known propositions that if there is a fraud on power which includes the power of acquisition, the entire proceedings would stand vitiated. It is also clear that if a public purpose is used as a cloak for a private objective, the acquisition citing such an ostensible public purpose would also be bad. As pointed out in Vyalikaval Housebuilding Coop. Society (supra), once the notification under Section 4 is tainted and invalid, the plea of delay or acquiescence cannot be raised on the part of the acquiring authority to validate the notification. It is also clear that when power is conferred for a particular purpose, it must be exercised for that purpose alone and for none other and that unless and until there is a real and palpable public purpose, there can be no acquisition of the land under the said Act. It is also clear that the land owner must be adequately compensated in terms of the said Act in respect of the acquisition of his land. As pointed out in Hindustan Petroleum Corporation Ltd (supra), it is also apparent that the State is not the sole Judge of whether the objective behind the acquisition is for a public purpose or not and it is always subject to judicial review.

37. These principles are well-settled. But the question arises as to whether they help the petitioner at all? The plea of the petitioner is that his land measuring 10800 sq. mts. was acquired for the purposes of traffic integration and intake shaft for the underground metro at Patel Chowk, MRTS Station. According to the petitioner, the entire land was not utilized and only an area of 2413.4 sq. mts. had been used by DMRC leaving a balance available land of 8386.6 sq. mts. The plea of the petitioner is that the DMRC only required 2413.4 sq. mts. of land for the public purpose of traffic integration and intake shaft for the underground metro at Patel Chowk, MRTS Station, yet, the petitioners land to the extent of 10800 sq. mts. was acquired and the balance 8386.6 sq. mts. was first sought to be utilized for the purposes of a Five Star Hotel, which project has since been dropped, and now it is to be used for a commercial building as part of property development.

The petitioner has objected to this on the ground that when only a part of the land was required for the project, why was an additional area of 8386.6 sq. mts. acquired and why is this area now sought to be used for a commercial purpose at the expense of the petitioners rights to the said land It is in this context that the petitioner has prayed for the quashing of the acquisition in respect of 8386.6 sq. mts. of land and return of the said land to the petitioner and the other co-owners.

38. On a consideration of all the facts and circumstances of the case, we find that the petitioners land had been utilized for the said project. In fact, as stated in the said additional affidavit on behalf of the DMRC, virtually the entire land had been excavated up to a depth of 15 metres. Tunnels have been made beneath the land and part of the Metro Station is also beneath the said land. It is only after all the construction activities were done, which took about three years, that the excavation was back-folded and now it appears that on the surface, an area of 8386.6 sq. mts. is available for property development. It cannot be said that the entire land was not acquired for the purposes which were mentioned in the notification under Section 4(1) of the said Act. It is only subsequently that part of the land is available for property development. Therefore, the decisions cited by the learned counsel for the petitioner would be of no help to the petitioner because we do not find that there has been any fraud on the power nor is the original acquisition tainted in any manner. This is so because the public purpose mentioned in the notification under Section 4 was undoubtedly a public purpose and it is for that purpose that the entire land was required at that point of time. It is only subsequent to the acquisition and vesting of the land in the Government that part of the land is available for property development. Thus, the initial acquisition cannot be faulted. More so, because the petitioner had withdrawn the earlier writ petition wherein the acquisition had been challenged.

39. We may now refer to the various decisions cited by the learned counsel appearing on behalf of the DMRC. In Gulam Mustafa & Ors (supra), it was held by the Supreme Court that once the original acquisition is valid and title has vested in the municipality, it is of no concern to the original owner as to how the municipality uses the excess land and such user cannot form the basis for invalidating the original acquisition. In Govt. of A.P and Anr v. Syed Akbar (supra), the Supreme

Court observed that when land is acquired for a public purpose and if the public purpose is achieved and there remains some unused land, then such unused land can be used for any other public purpose. Paragraphs 10 to 14 of the said decision read as under:-

"10. It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. Under Section 48 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even under Section 48, the Government could not withdraw from acquisition or to re-convey the said land to the respondent as the possession of the land had already been taken. The position of law is well settled. In State of Kerala and Ors. v. M. Bhaskaran Pillai and Anr.:1997 (5) SCC 432, para 4 of the said judgment reads:-

"4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is not other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."

11. In that case, an extent of 1.94 acres of land was acquired in 1952 for construction of National Highway and the construction was completed in 1955 in 80 cents of land and the balance of land remained unused. The remaining land was sought to be sold to the land owner at the same rate at which the compensation was awarded under Section 11. This again was challenged in the writ petitions. The Government tried to sustain the action on the basis of the executive order issued by the Government for permission for alienation of the land. On these facts, the position of law was made clear in para 4 extracted above. Thus, it is clear that under Section 16 of the Land Acquisition Act, the acquired land should vest in the State free from all encumbrances and that any executive order inconsistent with the provisions of Land Acquisition Act was invalid. Further that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In our view, this decision supports the case of the appellants fully.

12. In the case Chandragauda Ramgonda Patil and Anr. v. State of Maharashtra and Ors.: (1996) 6 SCC 405, claim of the petitioner for restitution of the possession of the land acquired pursuant to the resolution of the State Government was rejected. In para 2, this Court observed thus:-

"2........ We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken way back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the writ petitions. It is axiomatic that the land acquired for a public purpose would be utilized for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained unutilized, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the writ petitions."

13. Yet in another recent decision, this Court in Northern Indian Glass Industries v. Jaswant Singh and Ors. 2003 (1) SCC335, referring to the case of Chandragauda Ramgonda Patil and Anr. v. State of Maharashtra and Ors.: (1996) 6 SCC 405 and

other cases held that:

"if the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land". Paras 10 and 11 of the said judgment read thus:-

"10. In Chandragauda Ramgonda Patil and Anr. v. State of Maharashtra and Ors.: (1996) 6 SCC 405, it is stated that the acquired land remaining unutilized was not intended to be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of notification.

11. Yet again in C.Padma v. Dy. Secy. To the Govt. of T.N.: (1997) 2 SCC 627, it is held that acquired land having vested in the State and the compensation having been paid to the claimant, he was not entitled to restitution of possession on the ground that either original public purpose had ceased to be in operation or the land could not be used for other purpose."

14. From the position of law made clear in the aforementioned decisions, it follows that (1) under Section 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilized for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be re-assigned or re-conveyed to the original owner merely on the basis of an executive order."

40. In Union of India & Ors v. Jaswant Rai Kochhar (supra), the Supreme Court observed that:-

"4. We need not go to that part. Suffice it to state that it is a well-settled law that land sought to be acquired for public purpose may be used for another public purpose. Therefore, when the notification has mentioned that the land is sought to be acquired for housing scheme but it is sought to be used for District center, the public purpose does not cease to be public purpose and the nomenclature mentioned in the notification under Section 4(1) as housing scheme cannot be construed to be a colourable one. The notification under Section 4(1) could not have been quashed on the ground that the land is sought to be used for District center, namely, for commercial purpose. It is obvious that the lands acquired for a public purpose should serve only the public purpose of providing facilities of commercial purpose, namely, District center as conceded by the learned Counsel in fairness to be a public purpose. The notification under Section 4(1) cannot be quashed on the ground of change of user. The High Court was wholly wrong in quashing the notification on the ground of change of user."

41. In Ram Lal Sethi and Another (supra), 1300 sq. yds. of land was acquired for the public purpose of constructing a new road, but only 700 sq. yds. of land was used. The 600 sq. yds, which were unused, were given by the State Government to a private party (Weldon Inks Ltd). This was challenged. The Supreme Court held that to set aside the acquisition would be inequitable inasmuch as the private party (Weldon Inks Ltd) was not a party to the petition and had been in possession for seventeen years. In the special circumstances of the case, the Supreme Court observed that "exigencies of the development necessitated the allotment of a part to another". We may straightaway say that this decision of the Supreme Court in Ram Lal Sethi and Another (supra) was arrived at in the special facts and circumstances of that case and would not really be relevant for our purposes.

42. The learned counsel for the DMRC had also placed reliance on Municipal Corporation of Greater Bombay (supra). But, we feel that the reliance is misplaced. We say so because the learned counsel had placed reliance only on one of the opinions rendered by K. Ramaswamy, J, one of the Judges of the two Judge Bench of the Supreme Court. S.B. Majmudar, J, who was the other member of the said Bench, did not agree with the reasoning adopted by K. Ramaswamy, J, but agreed with the conclusion to the effect that the respondents therein had "missed the bus by adopting an indolent attitude in not challenging the acquisition proceedings promptly". The said decision was, therefore, one which was rendered merely on the ground of gross delay and laches and the observations, which were relied upon by the learned counsel for the DMRC on merits, in one of the opinions rendered in that case, would have no value as a precedent.

43. In Bangalore Development Authority (supra), the Supreme Court categorically observed in the context of Section 48 of the said Act that once possession is taken, even the State cannot direct re-conveyance of the property. The Supreme Court observed as under:- "62. It is not in dispute that Section 48 of the Land Acquisition Act would apply to the acquisitions made under the 1976 Act and in that view of the matter the State could exercise its jurisdiction for re-conveyance of the property in favour of the owner thereof only in the event possession thereof had not been taken. Once such possession is taken even the State cannot direct re-convey the property. It has been accepted before us that Section 21 of the General Clauses Act has no application but reliance has been sought to be placed on Section 65 of the 1976 Act which empowers the Government to issue such directions to the authority as in its opinion are necessary or expedient for carrying out the purpose of the Act."

44. In Forward Construction Company (supra), the Supreme Court observed as under:-

"25. The fourth point raised is that the plot No. 14 acquired for a public purpose or constructing a bus station was being used for a commercial purpose which was not permissible. This plea had been rejected by the High Court holding that a very substantial portion of the acquired plot was being utilised for the purpose for which it was acquired and the commercial use to which a small portion was being put would substantially augment the coffers of the Corporation for the benefit of the public at large without spending any further amount on the development. It cannot be said that the plot has been used for a different purpose from the one for which it had been acquired. All that can be said is that a part of the plot is being used for constructing two buildings which would augment the income of B.M.C. that could be utilised for the public purpose. The plot is being substantially used for the purpose for which it had been acquired. The additional use of the property will not make the use of the property for altogether a different purpose.

26. Public interest law activities 'at times champion one public interest which clashes with another public interest thus benefiting one segment of public at another's expense. As disclosed in the earlier part of the judgment, the General

Manager had sent up a proposal where under a part of plot No. 14 was to be used for construction of two buildings that will augment the income of the Corporation which could be used for the purpose of construction of staff quarters. The purpose for which the plot was earmarked remains intact, that is, for the construction of bus depot. In our opinion the other public interest sought to be achieved by the construction of the two buildings in addition to the bus depot is equally important."

45. From all these decisions, a clear line of thought is discernible, and that is, that where land is acquired for one public purpose and part of it is left unused, the same can be used for another public purpose. In case this is done, merely because the unused land is used for another public purpose would not be a ground for challenging the original acquisition itself. It is further clear that once the land has vested in the State either by virtue of Section 16 of the said Act or by virtue of Section 17(1), in urgent cases, there is no question of the land being re-vested in the erstwhile owners. The Government can withdraw from the acquisition only upto the point it does not take possession of the land sought to be acquired. Once possession has been taken, the acquisition cannot be given up. It is also clear that though part of the land acquired for one public purpose could be used for another public purpose, without invalidating the acquisition itself, land acquired for a public purpose cannot be used for a private objective. But, even if part of the land is sought to be used for a commercial purpose, the same would not revert to the original owner though the appropriate Government would be subject to an action in case the allotment for commercial use is arbitrary or unreasonable. Where a portion of the land acquired for a public purpose is left unused, it would be open to the State Government to utilize the same for a commercial purpose provided it is done in a transparent manner either through an open tender or through an auction.

46. Before we part with this case, we would like to comment upon the issue of compensation. We are mindful of the fact that the question of determination of compensation is not in issue in the present proceedings, but we feel that it is an important issue inasmuch as inadequacy of compensation is the fuel which drives the majority of litigation in relation to land acquisition. Section 23 of the said Act specifically indicates what is required to do be done in determining the amount of

compensation to be awarded for land and what factors the court should consider. The first and foremost factor which is to be taken into consideration is the market value of the land on the date of publication of the notification under Section 4(1). It is in the determination of the market value of the land that the entire controversy in most acquisition cases arises. If the land owners are given the correct market value or near correct market value of the land along with the interest and solatium thereon, majority of the disputes qua acquisition which are pending in courts would disappear. Judicial notice can be taken of the fact that land owners are not given the appropriate market values for their lands by the Collectors while making the awards. If the correct market value is determined and over and above the same, a solatium is also provided as a solace for the fact that his land is being acquired against his wishes, the land owner would feel more or less adequately compensated for the loss of his land. But, if a very low value of the land is fixed and it is not representative of the market value, the land owner would have reason to feel aggrieved because land acquisition is not meant to be confiscatory in nature. It is not a confiscation of land, but an acquisition of land upon payment of compensation which is to be determined taking into account the market value of the land. Judicial notice can also be taken of the fact that the sale deeds in respect of the land transactions in India do not reflect the correct value of the transactions. The value noted in the sale deeds are, by and large, less than the actual consideration paid by the buyer to the seller. This is so because a substantial part of the sale consideration is paid in cash and is not reflected in the sale deed so as to evade the tax net, be it income-tax, property tax or stamp duty etc. The market value, which is referred to in Section 23 of the said Act is the actual value which a land owner could expect to get on the sale of his land. Assuming that land transactions are not reflective of the correct value of the land, when a question arises for determining the market value of the land, an examination of the sale deeds of the properties in that area or neigh bouring areas would not be reflective of the market value of the land. Take the case of a land owner who knows that if he were to sell his property, he would get a price of Rs 1 crore, but on the basis of other sale deeds in the neighbouring areas, the value would be only about 60 lakhs because the balance amount does not get reflected in the sale deeds. In such a case when his land is acquired, he would be paid compensation on the basis of the market value, which, according to the sale deeds of neighbouring areas, would be only Rs 60 lakhs. In other words, he would stand to lose a sum of Rs 40 lakhs straightaway on the acquisition of his land. This is apart from the fact that he does not want to dispose of his land and it is against his wishes that the land is being acquired. Of course, he would be paid the 30% solatium as a solace for this acquisition, but even that would not be sufficient to cover the actual market value of the land. On the other hand, if this person were to be paid compensation of Rs 1 crore for the land which he knows is actually worth Rs 1 crore and as a balm and solace for the compulsory acquisition, he is additionally given solatium of 30%, there would be no grievance left insofar as such a person is concerned with regard to the said acquisition.

47. We have dealt with this aspect of the actual market value because we feel that most of the problems with regard to land acquisition are because of the unreal attitude of the Land Acquisition Collectors and the courts in not recognizing the reality. The lack of pragmatism has led to the burgeoning of the land acquisition cases. We may point out once again that the Land Acquisition Act, 1894 is an Act relating to the acquisition of land for public purposes and for companies. It is not an Act relating to the confiscation of land belonging to citizens.

48. Anyhow, in the circumstances mentioned above, the petitioner is not entitled to any of the reliefs prayed for and the writ petition is dismissed. The parties, however, are left to bear their respective costs.