IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.12943 of 2006
With
SPECIAL CIVIL APPLICATION No.12945 of 2006
To
SPECIAL CIVIL APPLICATION No.12989 of 2006
With
SPECIAL CIVIL APPLICATION No.17945 of 2006
With
SPECIAL CIVIL APPLICATION No.19617 of 2006
To
SPECIAL CIVIL APPLICATION No.19626 of 2006

For Approval and Signature:
HON'BLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1	Whether Reporters of Local Papers may be allowed to see the judgment?
2	To be referred to the Reporter or not?
3	Whether their Lordships wish to see the fair copy of the judgment?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?
5	Whether it is to be circulated to the Civil Judge?

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SHAH KANTILAL DEPAR & OTHERS - PETITIONERS
VERSUS
RELIANCE INFRASTRUCTURE LIMITED THROUGH MANAGER OR ANY OTHER & ANOTHER - RESPONDENTS

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Appearance :
MR MC BHATT WITH MR RD RAVAL FOR PETITIONERS.
MR SN SHELAT & MR KS NANAVATI, SENIOR ADVOCATES WITH MR.KEYUR D. GANDHI, ADVOCATE FOR NANAVATI ASSOCIATES FOR RESPONDENT NO.1.
MR MIHIR H. JOSHI, ADDITIONAL ADVOCATE GENERAL WITH MR SS SHAH, GOVERNMENT PLEADER AND MR SIRAJ GORI, ASSISTANT GOVERNMENT PLEADER FOR RESPONDENT NOS.2 TO 4.
MR JITENDRA MALKAN, ASSISTANT SOLICITOR GENERAL FOR RESPONDENT NO.5.
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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 25-26-27-28-29/09/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Rule is issued in each petition. Mr.Keyur D.Gandhi, learned advocate for M/s.Nanavati Associates, waives service of notice on behalf of the respondent No.1 in each petition. Mr.Siraj Gori, learned Assistant Government Pleader, waives service of notice on behalf of the respondent Nos.2 to 4 in each petition. No relief is claimed against the respondent No.5 and, therefore, this Court was of the opinion that it was not necessary to defer hearing of the petitions till the respondent No.5 was duly served with the notice issued earlier in the petitions. However, Mr.Jitendra Malkan, learned Assistant Solicitor General of India submitted on September 22, 2006, that he had informed the Ministry of Finance, Union of India, about the matter and had instructions to state before the Court that the said Ministry is not served with the notice issued in the

petitions. It was further mentioned by Mr.Malkan, learned counsel for the Union of India, that he has received instructions from the Ministry of Finance, Union of India, to state that the Union of India is neither necessary nor proper party in the matter and therefore, the Union of India should be deleted from the cause title of the petitions. Mr.M.C.Bhatt, learned Senior Advocate for the petitioners submitted that appropriate steps were taken by the petitioners to serve the respondent No.5 but the respondent No.5 could not be served and having regard to the facts of the case, the respondent No.5 should not be deleted from the cause title of the petitions as urged by Mr.Jitendra Malkan, learned Assistant Solicitor General of India, but should be retained in the cause title of the petitions. On the facts and in the circumstances of the case, this Court is of the opinion that the Union of India, which is impleaded as respondent No.5 right from the beginning should be retained in the cause title of the petitions. Probably, the Union of India is impleaded as one of the respondents in the petitions to enable it to express its views on the points raised by the

petitioners namely whether the respondent No.1 - Company is an estate dealer or whether by grant of in-principle approval, inquiry to be made under Rule 4 of the Rules had become mere formality or an eye-wash etc. However, except making statement at the Bar which is noted earlier, Mr.Jitendra Malkan, learned Assistant Solicitor General of India has not addressed the Court on merits of the case. Therefore, the prayer made by Mr.Jitendra Malkan, learned Assistant Solicitor General of India that the respondent No.5 be deleted from the cause title of the petitions is refused. As is evident from the order-sheet, the matters have been heard on different dates at length and in great detail and, therefore, with the consent of the learned advocates for the parties, they are taken up for final disposal today. All the above-numbered petitions involve consideration of common questions of facts and law, and are directed against acquisition proceedings initiated by the State of Gujarat for the respondent No.1, which is a Company incorporated under the provisions of the Companies Act, 1956. The prayers made in all the petitions are common and, therefore,

this Court proposes to dispose of all the above-numbered petitions by this common judgment. The Court also proposes to refer to facts mentioned in the main petition i.e. Special Civil Application No.12943 of 2006 for convenience.

2. By filing Special Civil Application No.12943 of 2006 under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ or order to quash; (i) report dated April 29, 2006 forwarded by the Deputy Collector, Jamnagar Division, Jamnagar, to the Collector, Jamnagar under Section 40 of the Land Acquisition Act, 1894 [“the Act” for short] relating to the lands situated at Village Kanalus, Taluka : Lalpur, District : Jamnagar, (ii) report dated April 29, 2006 forwarded by the Deputy Collector, Jamnagar Division, Jamnagar, to the Collector, Jamnagar under Rule 4 of the Land Acquisition (Companies) Rules, 1963 [“the Rules” for short] relating to the lands situated at Village Kanalus, Taluka : Lalpur, District : Jamnagar, (iii) report dated April 29, 2006 forwarded by the Deputy Collector, Jamnagar

Division, Jamnagar, to the Collector, Jamnagar under Section 40 of the Act relating to the lands situated at Village Padana, Taluka : Lalpur, District : Jamnagar, (iv) report dated April 29, 2006 submitted by the Deputy Collector, Jamnagar Division, Jamnagar, to the Collector, Jamnagar relating to the lands situated at Village Padana, Taluka : Lalpur, District : Jamnagar under Rule 4 of the Rules, (v) report dated April 29, 2006 forwarded by the Deputy Collector, Jamnagar Division, Jamnagar, to the Collector, Jamnagar under Section 40 of the Act relating to the lands situated at Village Navagam, Taluka : Lalpur, District : Jamnagar, (vi) report dated April 29, 2006 forwarded by the Deputy Collector, Jamnagar Division, Jamnagar, to the Collector, Jamnagar under Rule 4 of the Rules relating to the lands situated at Village Navagam, Taluka: Lalpur, District: Jamnagar, and (vii) three notifications issued by the State Government under Section 4(1) of the Act, relating to the lands situated at Village Navagam, Village Padana and Village Kanalus which were published in the Gujarat Government Gazette Extraordinary on June 2, 2006,

mentioning that the lands of Village Navagam, lands of Village Kanalus and the lands of Village Padana of Lalpur Taluka, District : Jamnagar, specified in the Schedule thereto were likely to be needed for the Company i.e. Reliance Infrastructure Limited, Jamnagar for public purpose of setting up of a product specific Special Economic Zone for petroleum and petrochemicals.

3. During the pendency and disposal of the petitions, hearing of objections under Section 5A of the Act was concluded by the respondent No.2 i.e. Deputy Collector, Jamnagar, after which three separate reports relating to the lands of village Navagam, Village Kanalus and village Padana of Lalpur Taluka of District Jamnagar were forwarded by the Deputy Collector, Jamnagar, alongwith three different forwarding letters dated August 29, 2006, to the State Government as required by Section 5A(2) of the Act. On scrutiny of those three reports, the State Government was satisfied that the lands of villages Navagam, Kanalus and Padana of Taluka: Lalpur, District : Jamnagar, specified in the Notifications

issued under Section 4 of the Act which were published in the Official Gazette on June 2, 2006, were needed to be acquired at the expenses of the respondent No.1 – Company for the public purpose of setting up of a product specific Special Economic Zone for petroleum and petrochemicals. Therefore, the State Government has made three declarations under Section 6 of the Act for the lands of three villages and published each declaration separately in the Official Gazette on August 30, 2006. The petitioners had, therefore moved draft amendment, seeking permission of the Court to challenge the three reports submitted by the Deputy Collector, Jamnagar, under Section 5A(2) of the Act to the State Government as well as three declarations made under Section 6 of the Act which are published in the Official Gazette on August 30, 2006. The draft amendment was granted by the Court on September 4, 2006, and therefore, now the petitioners have also prayed to quash (a) report dated August 29, 2006, forwarded by the Deputy Collector, Jamnagar, under Section 5A(2) of the Act to the State Government relating to the lands of village Navagam, Taluka:

Lalpur, District: Jamnagar, (b) report dated August 29, 2006, forwarded by the Deputy Collector, Jamnagar, under Section 5A(2) of the Act, to the State Government, relating to the lands of village Kanalus, (c) report dated August 29, 2006, forwarded by the Deputy Collector, Jamnagar, under Section 5A(2) of the Act, to the State Government, relating to the lands of village Padana, (d) declaration made under Section 6 of the Act relating to the lands of village Navagam which is published in the Official Gazette on August 30, 2006, (e) declaration made under Section 6 of the Act relating to the lands of village Kanalus which is published in the Official Gazette on August 30, 2006, and (f) declaration made under Section 6 of the Act relating to the lands of village Padana which is published in the Official Gazette on August 30, 2006.

4. The petitioner Nos.1 to 22 are residents of Village Kanalus, Taluka: Lalpur, District: Jamnagar, whereas the petitioner Nos.23 to 42 are residents of Village Padana, Taluka: Lalpur, District: Jamnagar, and the petitioner Nos.43 to 46 are residents of

Village Navagam, Taluka : Lalpur, District : Jamnagar. The petitioners own agricultural lands in their respective villages as mentioned in the petition. The respondent No.1 is a Company incorporated under the provisions of the Companies Act, 1956. The Parliament has enacted an Act known as “Special Economic Zones Act, 2005” to provide for establishment, development and management of the special economic zones for promotion of export, and for the matters connected therewith or incidental thereto. The Central Government has made the scheme to develop, operate and maintain special economic zones. The scheme aims at development of integrated world-class infrastructure for exports including carrying out manufacture of goods, rendering of services or in connection therewith, and includes industrial, commercial and social infrastructure. The components of a Special Economic Zone include roads, airports, ports, transport system, generation and distribution of power, telecom, hospitals, hostels, educational institutions, leisure and entertainment units, residential/industrial/ commercial complexes, water supply, sanitation, sewerage and any other

facilities required for development of the Zone. As per the scheme envisaged by the Special Economic Zones Act, 2005, the Special Economic Zones have to be developed and managed in the private sector, or jointly by the State Government and a private agency or exclusively by the State Government or their agencies. In case of privately developed zones, investors should be either Indian individuals, NRIs, Indian or foreign companies. The respondent No.1-Company was desirous of developing a Special Economic Zone in line with the Policy of Special Economic Zones announced by the Government of India with a view to augmenting infrastructural facilities for export production. Therefore, the respondent No.1 made an application dated October 4, 2005 to the Industries Commissioner, Government of Gujarat, Gandhinagar indicating its desire to set up a Special Economic Zone at Jamnagar, as Reliance Industries Limited (RIL) wanted to set up a Special Economic Zone in backward rural area of Jamnagar District of Gujarat with modern integrated infrastructure and the development of this project was bound to lead to fast track development of Saurashtra region of Gujarat

State and national economy as a whole. In the application, it was mentioned that Special Economic Zone [“SEZ” for short] would be developed by the respondent No.1, which is a subsidiary of RIL and the zone would house Reliance's own proposed Refinery of 30 MMTPA capacity and down-stream petrochemical units. It was also mentioned in the said application that the Refinery would produce a range of products including feed stocks like naphtha, propane/propylene etc. which would be available to other potential down-stream units that could come up in the Zone. The respondent No.1 by addressing the said letter requested the Industries Commissioner to recommend its case to the Ministry of Commerce, Government of India for formal approval of the proposal with the State Government commitments outlined by the Ministry of Commerce in their `in-principle approval' granted for the proposed Zone. The Government of India, Ministry of Commerce and Industry, Department of Commerce vide letter dated October 21, 2005 informed the respondent No.1 that the in-principle approval of the Government for setting up of a product specific SEZ for petroleum and petrochemicals at Jamnagar,

Gujarat by the respondent No.1 was granted. After obtaining in-principle approval of the Government of India, the respondent No.1 by letter dated November 10, 2005 proposed to the State Government to initiate proceedings for acquisition of lands situated in Villages Kanalus, Navagam, Kana Chhikari, Dera Chhikari and Padana of Lalpur Taluka, District : Jamnagar for establishment of Special Economic Zone. Along with the said proposal, the respondent No.1 forwarded copy of Memorandum and Articles of Association, copies of Village Forms 7/12 and 8-A relating to the lands situated in the above-mentioned villages, project-report and prescribed form containing necessary particulars with annexures, to the State Government. The Government of India, Ministry of Commerce and Industry, Department of Commerce, vide letter dated December 9, 2005 informed the respondent No.1 that the proposal made by the respondent No.1 vide its letter dated November 7, 2005 for setting up a project specific Special Economic Zone for petroleum and petrochemicals at Jamnagar, Gujarat, was approved by the Government of India. In view of the proposal dated November 10,

2005 made by the respondent No.1 to the State Government to acquire lands from Villages Kanalus etc., the Industries Commissioner by letter dated November 10, 2005 called for certain information and particulars from the respondent No.1. Relevant particulars and informations were sent by the respondent No.1 to the State Government with its forwarding letter dated February 7, 2006. The respondent No.1 addressed another letter dated March 13, 2006 to the Industries Commissioner, Government of Gujarat, Gandhinagar to recommend to the Revenue Department of the State Government and the District Collector, Jamnagar for allotment of government lands and acquisition of private lands. The Industries Commissioner desired to discuss on the requirement of lands for petroleum and petrochemicals, Special Economic Zone at Jamnagar, with the President (COM) and Corporate Affairs of the respondent No.1-Company, and accordingly, the President was requested to remain present on April 1, 2006 in the Chamber of Industries Commissioner to discuss the said subject. By a communication dated April 18, 2006, the District Collector, Jamnagar was informed by the Principal

Chief Industrial Adviser about the requirement of lands by the respondent No.1 for setting up petroleum and petrochemical sector specified SEZ at Jamnagar. The Section Officer, Revenue Department, Government of Gujarat by a communication dated December 2, 2005 informed the District Collector, Jamnagar that District Collector was requested by the State Government to submit inquiry report under Section 40 of the Act and Rule-4 of the Rules.

5. The District Collector, Jamnagar, by order dated December 15, 2005 authorized the Deputy Collector, Jamnagar Division, Jamnagar to make inquiry as contemplated by Section 40 of the Act and six matters specified in Rule 4 of the Rules and submit to him the reports relating to the lands of Villages Kanalus, Navagam, Kana Chhikari, Dera Chhikari and Padana of Taluka Lalpur, District: Jamnagar. After receipt of communication dated December 15, 2005, the Deputy Collector, Jamnagar, called for report from the District Agriculture Officer, Jamnagar. The District Agriculture Officer, Jamnagar, submitted his detailed report alongwith

forwarding letter dated April 19, 2006, mentioning inter-alia that (1) the lands sought to be acquired were contiguous to Reliance Industries, (2) lands were dry irrigated/ non-irrigated lands on which it was possible to raise crops with the help of rainy water but the fertility of the lands was ordinary and (3) the lands sought to be acquired are adjoining to Reliance Industries Ltd. whereas on one side of the lands to be acquired, a railway line passes and therefore, except the lands sought to be acquired, no other lands in the locality suitable for the purpose of acquisition are available. Pursuant to the authorization granted to him by the District Collector, Jamnagar, the Deputy Collector, Jamnagar Division, Jamnagar conducted inquiry under Section 40 of the Act. Before conducting inquiry, the Deputy Collector, Jamnagar Division, Jamnagar informed the concerned land-owners by serving Registered Post A.D. notices and also in person through *Talati*. The inquiry relating to lands of Village Kanalus was conducted at 10.00 A.M. on April 12, 2006, regarding which rojkam dated April 12, 2006, was prepared, whereas inquiry in relation to the lands of Village

Padana was conducted at Village Padana at 4.00 P.M. on April 18, 2006, and inquiry was conducted relating to the lands of Village Navagam at 4.40 P.M. on April 10, 2006. While conducting inquiry under Section 40 of the Act, the Deputy Collector noticed that (1) the Reliance Infrastructure Limited whose earlier name was Reliance Project Engineering Associates Limited is a public company incorporated under the provisions of the Companies Act, 1956, (2) the Reliance Infrastructure Limited is granted in-principle approval for setting up a product specific SEZ for petroleum and petrochemicals at Lalpur Taluka of District: Jamnagar and Principal Chief Industrial Advisor, by his letter dated April 18, 2006, had recommended to acquire the private lands. After perusing the materials collected during the course of inquiry under Section 40 of the Act, the Deputy Collector, Jamnagar, found that (1) the project was important to the nation from the view point of international trade, (2) in the first phase of the project itself, infrastructure facilities were to be provided at the cost of Rs.5,000 crores over land admeasuring 6000 acres, (3) in the first phase itself

different industrial units were to invest Rs.35,000 to Rs.40,000 crores including investment of Rs.25,000 crores by Reliance Industries Limited, (4) because of the project, other units manufacturing petrochemical products would be benefited, (5) in the second phase infrastructure facilities would be made available over the land admeasuring 4000 acres, (6) the infrastructure facilities to be provided include amenities like development of land, roads, buildings, railways, port, water supply, entertainment facilities, multi-media, transport, production facilities, I.T. centre of international standards, etc. (7) after obtaining foreign technology and assistance of experts, modern complex is to be developed, (8) because of the project, direct/ indirect employment avenues for 2,50,000 unemployed persons of the country and the State would be available, (9) the employees associated with the project would be provided residential units with all modern facilities, (10) off-shore financial centre is to be established to assist foreign exporters, (11) as the project is to be established in backward area of Lalpur Taluka, District: Jamnagar, it would help

rural progress of the State, and (12) the project is wholly export oriented and would therefore enable the country to earn substantial foreign exchange which would contribute a lot to the financial growth of the country as well as the State and concluded that the acquisition is needed for the construction of work of the Reliance Infrastructure Limited which is taking steps for engaging in work which is for a public purpose.

While conducting inquiry under Rule 4 of the Rules, the Deputy Collector noticed relevant features of the project undertaken by the respondent No.1 which were noticed by him at the time of making inquiry under Section 40 of the Act and found that (1) as different infrastructure facilities of international standards were to be provided, the area of the lands proposed to be acquired was the minimum needed for such a project and was not excessive, (2) the Government of India has granted approval for setting up a project specific SEZ for petroleum and petrochemicals at Lalpur Taluka after scrutiny of technical and other aspects and therefore, the

acquisition of the private lands of Villages Navagam, Kanalus, Kana Chhikari, Dera Chhikari and Padana and Government lands is suitable for the purpose, (3) during private negotiations, the Reliance Infrastructure Limited offered compensation to the land owners at the rate of Rs.65,000/- per Vigha for Bagayat lands and Rs.53,000/- per Vigha for Jirayat lands over and above price for wells, trees, Kundis (small ditch like a basin), pipelines, buildings, etc. but 54 land owners demanded rate at Rs.3,00,000/- to Rs.6,40,000/- per Vigha and some land owners demanded Rs.400/- per sq.mt. whereas as per Government Jantri, Bagayat lands have value of Rs.1,50,000/- per Hectare (i.e. Rs.24,000/- per Vigha) and Jirayat lands have the value of Rs.1,25,000/- per Hectare (i.e. Rs.20,000/- per Vigha) whereas average sale price of lands in last five years indicates that the value of the lands is at Rs.1,08,653/- per hectare, and therefore, there is no doubt that the Company had made all reasonable efforts to get the lands by negotiation with the persons interested therein on payment of reasonable price and such negotiations had failed, (4) the

Company had made its best endeavour to find out lands in the locality for the purpose of the acquisition, (5) in view of the contents of the report of the District Agriculture Officer, Jamnagar, the lands proposed to be acquired were not good agricultural lands and that no alternative suitable site is available so as to avoid the acquisition of the lands in question and (6) the Company is in a position to utilize the lands expeditiously. After making detailed inquiry, the Deputy Collector, Jamnagar Division, Jamnagar forwarded his five reports under Section 40 of the Act and other five reports under Rule 4 of the Rules relating to the lands of five villages of Lalpur Taluka to the District Collector, Jamnagar on April 29, 2006. The District Collector, Jamnagar scrutinized those reports and thereafter sent his own five reports to the State Government on May 15, 2006 including three reports relating to the lands of (1) Village Navagam (2) Village Kanalus and (3) Village Padana, to the State Government. On consideration of those reports, the State Government was satisfied that the lands specified in the reports situated at Villages Kanalus, Padana, Kana Chhikari,

Dera Chikkari and Navagam of Lalpur Taluka, District : Jamnagar were likely to be needed for the respondent No.1-Company for public purpose of setting up a product specified Special Economic Zone for petroleum and petrochemicals. Therefore, the State Government issued five different Notifications for five villages under Section 4(1) of the Act, which were separately published in the Gujarat Government Gazette Extraordinary, dated June 2, 2006. As observed earlier, during the pendency of the petitions, five different reports including three reports relating to the lands of Villages Kanalus, Navagam and Padana were forwarded by the Deputy Collector to the State Government, as contemplated by Section 5A(2) of the Act, and five different declarations including three declarations relating to the lands of Villages Kanalus, Navagam and Padana, with which the Court is concerned in the instant petitions, have been made under Section 6 of the Act, which are published in the Official Gazette on August 30, 2006, giving rise to the above-numbered petitions.

6. The case of the petitioners is that Section 3(c) of the Act defines expression “Collector” and as the respondent No.2, who is Deputy Collector, Jamnagar Division, Jamnagar is not Collector within the meaning of Section 3(c) of the Act, the reports submitted by the respondent No.2 i.e. Deputy Collector, Jamnagar Division, Jamnagar to the Collector, Jamnagar should be treated as null and void. According to the petitioners, the Act does not authorize the Collector, as defined in Section 3(c) of the Act, to delegate his functions and duties to any other officer and, therefore, authorization, which was made by the District Collector, Jamnagar in favour of the Deputy Collector, Jamnagar Division, Jamnagar for conducting inquiries under Section 40 of the Act and Rule 4 of the Rules should be regarded as bad in law. The petitioners have averred that grant of previous consent of the State Government and execution of agreement as contemplated by Section 39 of the Act are *conditions precedent* for initiating land acquisition proceedings in favour of the Company as well as for issuance of notifications under Section 4 of the Act, and as the provisions of

Section 39 of the Act, as amended by Gujarat Act No.20 of 1965, were not complied with, the notifications issued under Section 4 of the Act, which were published in Official Gazette on June 2, 2006, deserve to be set aside. What is stressed by the petitioners is that the respondent No.1 is a `developer' within the meaning of Section 2(g) of the Special Economic Zones Act, 2005, but, is not a Company, which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose and, therefore, the provisions of Part-VII of the Act could not have been pressed into service by the State Government for the purpose of acquiring lands from Village Kanalus, Padana and Navagam of Lalpur Taluka, District : Jamnagar for the respondent No.1-Company. It is stated by the petitioners in the petitions that the concept emerging from the provisions of the Special Economic Zones Act, 2005 is that the developer has to develop the lands covered by Special Economic Zone and, thereafter, has to either lease or sell lands or buildings to other persons engaged in industrial activities and as the respondent No.1, as developer,

is, in reality, engaged only in real estate business, the provisions of the Act could not have been invoked for acquiring the lands from the above-mentioned villages for the respondent No.1-Company. According to the petitioners, the Special Economic Zones Act, 2005 does not provide for acquisition of lands for the purpose of establishment of Special Economic Zone, and as the Government of Gujarat has mechanically initiated the land acquisition proceedings as if it were bound to acquire the lands for the respondent No.1 on grant of in-principle approval to the respondent No.1 by the Government of India, to establish Special Economic Zone in Jamnagar District, the petitions should be accepted. The petitioners have mentioned in the petition that the respondent No.1-Company has to function under the SEZ Act and as the activities of the respondent No.1-Company are controlled and regulated by the Central Government, the appropriate Government, in the instant case, would be Central Government and not State Government, as a result of which, publication of notifications issued under Section 4(1) of the Act should be regarded as illegal. What is highlighted in

the petition is that as the order dated December 9, 2005 passed by the Government of India granting approval under the Special Economic Zones Act, 2005 stipulates that the developer should make adequate provision for rehabilitation of displaced persons, the prayers made in the petition should be granted because no adequate provision has been made at all by the respondent No.1 for rehabilitation of displaced persons including the petitioners. The petitioners have contended that the reports dated April 29, 2006 submitted by the Deputy Collector, Jamnagar Division, Jamnagar, to the District Collector, Jamnagar under Section 40 of the Act and Rule 4 of the Rules, do not indicate that the Deputy Collector had applied his mind to the relevant facts and circumstances of the case and, therefore, those reports deserve to be set aside. The petitioners have averred in the petition that no reasonable opportunity of being heard was afforded to them by the Deputy Collector while conducting inquiry under Section 40 of the Act and Rule 4 of the Rules and, therefore also, the reports dated April 29, 2006 submitted under Section 40 of the Act and Rule 4 of the Rules should be set aside,

as the principles of natural justice were not followed. According to the petitioners, it was the duty of the District Collector, Jamnagar to ascertain whether endeavours were made by the respondent No.1 to find out suitable lands in the locality and as the District Collector has failed to consider the said vital factor, the notifications could not have been issued under Section 4 of the Act, nor they could have been published in Official Gazette. The petitioners have stated that no evidence could be adduced by the respondent No.1 to establish that the respondent No.1 had negotiated with the land-owners and offered to pay reasonable price of the lands sought to be acquired, as a result of which, the reports submitted by the Deputy Collector under Section 40 of the Act and Rule 4 of the Rules could not have been relied upon while issuing notifications under section 4 of the Act. It is asserted by the petitioners that inquiry under Section 40(1) of the Act can be held only by the officer appointed by the appropriate Government under Section 40(2) of the Act, and as the respondent No.2 i.e. Deputy Collector, Jamnagar Division, Jamnagar, is not an

officer appointed by the Government under Section 40(2) of the Act, no inquiry could have been initiated by him under Section 40 of the Act and, therefore, the reports submitted by him on April 29, 2006 should be regarded as null and void. The petitioners have mentioned that the finding recorded by the respondent No.2 in his reports forwarded under Rule 4 of the Rules that during negotiations, fair price was offered by the respondent No.1 to the land-owners, is arbitrary, inasmuch as while considering the question whether price offered by the respondent no.1 was fair, price of waste lands sold by the State Government to the respondent No.1 in the vicinity of the lands sought to be acquired, was not considered and, therefore, the reports submitted on April 29, 2006 under Rule 4 of the Rules should be set aside. The petitioners have averred in the petition that the decision to establish Special Economic Zone is taken at the highest-level by the Central Government and, therefore, the Deputy Collector, Jamnagar Division, Jamnagar could not have genuinely considered the six factors enumerated in Rule 4 of the Rules, and therefore, the reports submitted by him on April 29,

2006 under Rule 4 of the Rules should be set aside treating them as an empty formality and an eyewash. According to the petitioners, earlier also Reliance Industries Limited had acquired lands from Village: Moti-Khavadi and other Villages of Jamnagar District for establishment of Refinery, but, land admeasuring 1627 Acres is used for plantation of mango trees under the guise of Green-Zone and as the said Company is making profits, the instant land acquisition proceedings for the respondent No.1 – Company should be set aside. What is mentioned in the petition is that a just and fair procedure was not adopted by the respondent No.2 i.e. Deputy Collector, Jamnagar Division, Jamnagar while conducting inquiry under Section 40 of the Act and Rule 4 of the Rules, as a result of which, the petitioners had made representation dated May 2, 2006 to the District Collector, Jamnagar requesting him not to accept those reports, which was not considered at all by the District Collector, Jamnagar and, therefore, notifications issued under Section 4 of the Act, which were published in Official Gazette on June 2, 2006, deserve to be set aside. It is pleaded by the

petitioners that during the course of hearing of the petitions, with a view to over-reaching the process of the Court, the respondents No.2 to 4 in collusion with the respondent No.1 have proceeded further in the matter with unusual haste and ultimately, the respondent No.2 has submitted three reports relating to the lands of the three villages under Section 5A(2) of the Act, to the State Government, which should be set aside by the Court. It is mentioned by the petitioners that the Government of Gujarat, with a view to favouring the respondent No.1 and over-reaching process of the Court has made three declarations under Section 6 of the Act which are published separately in the official gazette on August 30, 2006, and they also deserve to be set aside. According to the petitioners, the Deputy Collector, Jamnagar, who had submitted reports dated April 29, 2006, under Section 40 of the Act and Rule 4 of the Rules could not have considered the objections under Section 5A of the Act nor could have submitted reports to the State Government under Section 5A(2) of the Act and therefore, those pre-determined reports are liable to be set aside. The

petitioners have claimed that the respondent No.2 has, mechanically and without application of mind to the relevant factors, submitted the reports and as opportunity of hearing to the petitioners before accepting those reports was not afforded, the three declarations made under Section 6 of the Act are bad in law. Under the circumstances, the petitioners have filed the instant petitions and claimed reliefs to which reference is made earlier.

7. On service of notice, Mr.Paresh Shambhuprasad Davey, who is authorized signatory of the respondent No.1-Company, has filed reply-affidavit on behalf of the respondent No.1-Company controverting the averments made in the petitions which were then not amended. In the reply, a preliminary contention as to the maintainability of the petitions is raised and it is claimed that as the petitioners have invoked constitutional jurisdiction of this Court at a premature stage, the petitions should be dismissed. Elaborating the said preliminary contention, it is mentioned that the petitioners have challenged the notifications issued under Section 4

of the Act, but, the notification under Section 4 of the Act is merely an introductory measure and is tentative in its nature, as a result of which, the petitions should not be entertained. It is further pleaded in the reply that notification under Section 4 of the Act is of exploratory character and as it does not *propria motu* result into acquisition and has no effect on any legal or fundamental rights of the petitioners, the petitions should be dismissed. It is further mentioned in the reply that the project, which the respondent No.1-Company is contemplating, would be jeopardized as well as will have a cascading effect of loss of investment opportunity of more than Rs. 40,000 crores to the State and as entertainment of the petitions will have adverse effects such as; (i) loss of opportunity of investment in the State, (ii) chances of shifting of potential SEZ units to other States, where number of SEZs are coming up, (iii) attempt of State to capitalize fresh foreign investment through Vibrant Gujarat Global Investors Summit to be held in January 2007 if the infrastructure is not available for show-casing; (iv) delay in generation of employment opportunity in the

SEZ and units-expected employment of about 40000; (v) State can lose the advantage of having the first specialized SEZ for petroleum and petrochemicals, (vi) delay in crystallizing planned investment of SEZ units by about Rs. 40,000 Crores, may result into shifting of investment to other States, (vii) delay in huge foreign exchange earning to the country through exports from the SEZ, and (viii) jeopardization of huge infrastructure creation in the backward region of the State, the petitions should not be entertained. After emphasizing that the contentions raised in the petitions are ill-founded and that the lands which are sought to be acquired are needed for public purpose, it is mentioned in the reply that the lands sought to be acquired are needed for setting up special economic zones. Explaining as to what special economic zones are, it is mentioned in the reply that they are duty-free enclaves established for the purpose of providing infrastructural facilities to promote industrial growth, increasing employment opportunity and increasing exports of Indian goods. It is claimed in the reply that SEZ would attract a number of

industries, both domestic and multi-nationals, for setting up their manufacturing facilities in the backward region of the State, and is envisaged as integrated infrastructure facilities which is bound to result into development of modern urban infrastructure facilities in the rural areas of the State. It is mentioned in the reply that setting up of new industries will result in substantial increase in industrial investment, increase in production, increase in number of direct and indirect employment opportunities being created in the backward region of the State, increase in foreign direct investment, substantial increase in exports of the country and resultant increase in foreign earnings, and as the project for which the lands are sought to be acquired, would benefit the public in general in terms of access to respectable and perennial source of earning and good living, the petitions should not be entertained. After asserting that the lands in question are sought to be acquired for the respondent No.1-Company for developing a special economic zone in-line with the policy of Special Economic Zones announced by the Government of India with a view to

augmenting infrastructure facilities for export production, it is claimed that after complying with all the provisions of the guidelines framed by the Government of India under the Special Economic Zones Act, 2005 and pursuant to the request made by the respondent No.1-Company, the Government of India granted in-principle approval for establishment of special economic zone for petroleum and petroleum products vide letter dated October 21, 2005 and, therefore, challenge to Section 4 notifications is misconceived. It is mentioned in the reply that since this Project should be of world-class and international standards, at the primary stage it was necessary to set up basic infrastructure such as roads, railways, port, sanitation, water supply, buildings, recreation facilities, amusement complex, multi-model transport system, manufacturing facilities, IT Center, International Trading Center and, therefore,, it was decided that the initial development of the Zone should be commenced with transfer of 1400 Acres of existing land from the associate company of the respondent No.1-Company, but, for establishing a Project of world-class and

international standard SEZ, the respondent no.1-Company requires around 10,000 Acres of land. It is stated in the reply that the respondent No.1-Company applied to the Industries Commissioner vide letter dated October 4, 2005 for recommending to the Government of India for establishment of special economic zone under Section 3 of the Gujarat Special Economic Zones Act, 2004. It is mentioned in the reply that in connection with the said application, the respondent No.1-Company was asked to submit presentation before the Special Economic Zone Development Authority constituted under Section 4 of the Act of 2004, and accordingly, the respondent NO.1-Company had given a detailed presentation before the Authority, pursuant to which, the Government of Gujarat had recommended the Project for in-principle approval by the Government of India. It is averred in the reply that the respondent No.1-Company vide its application dated November 10, 2005 applied to the Secretary, Revenue Department for initiating proceedings under the Act for acquiring private lands and for allotting Government waste lands comprising of approximately 9700 acres of Villages Kanalus,

Navagam, Kana Chhikari, Dera Chhikari and Padana of Lalpur Taluka in Jamnagar District. According to the deponent, in response to the application of the respondent No.1-Company dated November 10, 2005, the Deputy Secretary, Ministry of Commerce and Industry, New Delhi vide his letter dated December 9, 2005 accorded formal approval to the respondent No.1-Company for setting up of product specific special economic zone for petroleum and petrochemicals at Jamnagar on 1400 acres of land. A copy of the said communication has been produced by the deponent of the reply at Annexure-V with the affidavit-in-reply. What is mentioned in the reply is that pursuant to the application dated November 10, 2005 of the respondent No.1-Company for initiating proceedings under the Land Acquisition Act, the Deputy Commissioner of Industries vide his letter dated January 20, 2006 informed the respondent No.1-Company to attend the meeting convened on January 25, 2006 along with the lay-out plan of SEZ, details of the requirement of land and the implementation schedule of SEZ, and that the respondent No.1-Company attended the said meeting along with the relevant information

sought for by the Industries Commissioner. It is mentioned in the said reply that in furtherance to the meeting held on January 25, 2006 with the Principal Chief Industrial Adviser, Office of the Industries Commissioner, Gujarat State, the respondent No.1-Company forwarded the information viz. (i) statement showing survey numbers and area of private lands applied for by the respondent No.1-Company for acquisition under the Land Acquisition Act, (ii) statement showing the village-wise private, Gauchar and government lands applied for by the respondent No.1-Company aggregating to about 4000 hectares, and (iii) village revenue maps of Padana, Kanalus, Navagam, Dera Chhikari and Kana Chhikari with marking of private lands and government lands applied for by the respondent No.1-Company along with forwarding letter dated February 7, 2006. It is mentioned in the reply that by the said forwarding letter, the respondent No.1-Company requested the Industries Commissioner to recommend to the Revenue Department and the District Collector for allotment of government lands and acquisition of private lands aggregating to about 4000 hectares for development

of SEZ project. The deponent has produced a copy of the said letter at Annexure-VII to the reply. It is averred in the reply that the respondent no.1-Company was further called for discussions on the issue of allotment of land and was asked to give confirmation about the requirement of land, which was given by the respondent No.1-Company vide its letter dated February 17, 2006. It is claimed in the reply that once again, by letter dated February 22, 2006, the respondent No.1-Company was informed that the Industries Commissioner had convened a presentation and round table discussion on the issue of recommendation of land for SEZ at Jamnagar on February 23, 2006 and, therefore, pursuant to the said intimation, the respondent No.1-Company had attended the said meeting, and presented as well as explained in detail the complete Project and requirement of land for SEZ. Thus, what is claimed in the reply is that after detailed scrutiny of the entire Project, the Principal Chief Industrial Adviser recommended allotment/acquisition of 4494.50 hectares of land for the SEZ Project. In the reply it is asserted that the respondent No.1-Company had made

sincere efforts for obtaining lands directly from land-owners through negotiations with them and also negotiated with farmers of Navagam, Kanalus, Kana Chhikari, Dera Chhikari and Padana of Lalpur Taluka, District : Jamnagar on February 10, 2006, February 11, 2006, February 13, 2006, February 14, 2006 and February 15, 2006 respectively and offered just and reasonable price i.e. for Jirayat lands, Rs.53,000/- per Vigha (equivalent to Rs.3,27,540/- per hectare) and for Bagayat lands Rs.65,000/- per Vigha (equivalent to Rs.4,01,700/- per hectare). What is claimed in the reply is that the price offered by the respondent No.1-Company for the lands sought to be acquired was a reasonable price, since the said price is higher than average price of the lands sold in last five years as well as prevailing Jantri price, but, the said negotiations failed as some of the landowners demanded more price and, therefore, the respondent No.1-Company submitted its report along with details of demand raised by each and every land-owner. The deponent has produced a copy of one such report relating to village Padana at Annexure-XIII to the affidavit-in-reply. What is asserted in the reply

is that the contents of the representations submitted by the land-owners were duly verified by the Deputy Collector, Jamnagar by giving hearing to the land-owners at Navagam on April 10, 2006, at Kanalus on April 12, 2006 and at Padana on April 18, 2006. It is pointed out in the reply that in view of the provisions of Section 52-A of the Act, the Deputy Collector, Jamnagar Division, Jamnagar had jurisdiction to inquire into the matters specified in Section 40 of the Act as well as Rule 4 of the Rules and, therefore, it is wrong to contend that the Deputy Collector was not empowered to perform functions of the Collector under the Act. While dealing with the contention raised by the petitioners that Section 4 notifications could not have been put into force before obtaining consent from the Government and reaching an agreement between the Company and the Government as required by Section 39 of the Act, it is mentioned in the reply that in view of the decision of the Division Bench of the Gujarat High Court in Pratapsang Naranji Jadeja vs. State of Gujarat, 1998(1) GLH 499, this contention should not be accepted. In the reply, the averment made by the

petitioners that the respondent No.1-Company is not engaged in any industry, wherein workmen are employed, is emphatically denied and is branded as absurd as well as baseless allegation made by the petitioners. What is pointed out in the reply is that the respondent No.1-Company i.e. Reliance Infrastructure Limited is a Company registered under the Companies Act, 1956 for the purpose of performing various development activities as mentioned in its Memorandum of Associations and Articles of Association and has been appointed as a developer of Petroleum and Petrochemicals Product Specific Special Economic Zone by the Government of India to establish and provide infrastructure for various petroleum and petrochemicals based industries to be established in near future under Special Economic Zone Scheme of Government of India. It is stated in the reply that the respondent No.1-Company is incorporated for the purpose of developing industrial areas under the Special Economic Zones Act and, therefore, it is asserted that the contention raised in the petition that the Company is not engaged in any industrial activities, is far from truth. After denying the

averment made in the petition that the respondent No.1-Company being developer, is not expected to be engaged in any specific manufacturing activities, it is mentioned in the reply that the developer of special economic zone is approved by the Government of India, based on the recommendations of the State Government and in view of functions of developer as defined in the Special Economic Zones Act, 2005, each and every SEZ is deemed to be an industrial township as defined under Article 243Q of the Constitution. It is mentioned in the reply that SEZs are industrial townships having integrated infrastructure for industrial, residential, transport, logistics, utilities, power, water, transport and storage, laboratory and research center, waste disposal, housing, recreation, social infrastructure, education and health care facilities and such other amenities as may be required by the industries set up in the Zone and, therefore, it is wrong to state that the respondent No.1-Company being developer is not expected to be engaged in any specific manufacturing activities. After emphatically denying the allegation that the respondent No.1 is a real estate

developer and will make huge out of proportion profits as a direct consequence of compulsory acquisition of lands from poor peasants, it is asserted in the reply that the respondent No.1-Company is not a real estate speculator, but, has to perform the municipal functions of developing and administering an industrial township with integrated infrastructure facilities as contemplated under the provisions of the SEZ Act. After referring to the relevant provisions of the SEZ Act, it is emphasized that letter of approval granted by the Government of India can be suspended or transferred by Board of Approval appointed under the provisions of the said Act for breach of any of the provisions of the Act or the Rules, or if the developer is unable to discharge the functions or perform duties imposed upon him and, therefore, the proposed acquisition needed for the respondent No.1-Company, which is taking steps for engaging itself in development of industrial estate and providing infrastructural facilities, is for a public purpose within the meaning of the Act. It is asserted in the reply that it is a settled proposition of law that development of industrial

area is a public purpose and for any public purpose, private lands can be acquired under the provisions of the Act and as SEZ Project is totally export oriented project and likely to earn huge foreign exchange for the nation, the acquisition of lands in the instant case should be regarded for public purpose. It is mentioned in the reply that it is wrong to contend that the Deputy Collector had not applied his mind and had failed to take into consideration the relevant factors before making reports under Section 40 of the Act. According to the deponent of the affidavit-in-reply, the petitioners were afforded reasonable opportunity of being heard by the Collector and the Deputy Collector in the proceedings initiated under Section 40 of the Act as well as Rule 4 of the Rules, and the Deputy Collector had, in fact, considered all the representations made by the persons interested and objections raised by them. While explaining as to how the principles of natural justice were complied with, it is mentioned in the reply that notices to all the land-owners of every village were issued well in advance through registered post A.D. and notices were

depicted/displayed through Talati-cum-Mantri on each and every survey number and notices were also affixed on village panchayat notice-board, pursuant to which hearing for land-owners of Navagam was arranged on April 10, 2006, of Kanalus was arranged on April 12, 2006, of Padana was arranged on April 18, 2006, and oral as well as written submissions of farmers were also obtained. It is asserted in the reply that as per the SEZ Scheme of the Central Government, the respondent No.1-Company will provide necessary basic infrastructure to various companies, may be of Reliance Group, or any other petroleum and petrochemical products based industry, and as the land is going to be utilized for public purpose connected with industrial activities, it is wrong to say that exercise of powers by the respondent No.2 under Section 40 of the Act was of no substance. According to the deponent of the affidavit-in-reply, the land needed for SEZ Project by the respondent No.1-Company is for petroleum and petrochemical products based industries and hence the location of SEZ Project is nearby and in the vicinity of existing Refinery in Jamnagar District, which cannot be

considered to be illegal at all. It is asserted in the reply that the Deputy Collector was convinced with the efforts made by the Company to get the lands by negotiation with the land-owners on payment of reasonable price, and it is wrong to contend that relevant factors before making report under various sub-clauses of Rule 4 were not taken into consideration by the Deputy Collector. What is asserted in the reply is that the Deputy Collector, Jamnagar, had performed his functions as per the provisions and procedure prescribed under the Land Acquisition Act after issuing notices to all the land-owners by registered Post A.D. and, therefore, the reports submitted by him should not be regarded as illegal. Further, under genuine belief and understanding, it is mentioned by the deponent of the affidavit-in-reply that the Collector in his report under Section 40 of the Act and Rule 4 of the Rules has submitted to the Government of Gujarat account of detailed outcome of Company's efforts regarding negotiations with land-owners and, therefore, the plea that price of land offered was inadequate should not be accepted by the Court. After emphasizing the

purposes of the inquiry under Rule 4 of the Rules, it is asserted in the affidavit-in-reply that the respondent No.1-Company had complied with all the legal provisions and followed just and fair procedure, as a result of which the petitions should be dismissed. It is stated in the reply that notifications issued under Section 4 of the Act were published in the Government Gazette and notices were issued, after which the procedure contemplated under Section 5(A) of the Act was undertaken by the Deputy Collector, Jamnagar and, therefore, the petitions should not be entertained. By filing the reply, Mr.Paresh S.Davey, who is authorized signatory of the respondent No.1-Company, has demanded dismissal of the petitions.

8. On service of notice, Mr.Laljibhai Balabhai Bambhaniya, who is Deputy Collector, Jamnagar, has filed affidavit-in-reply on behalf of the respondent Nos.2 to 4 controverting the averments made in the petition. In the said reply, it is mentioned that acquisition proceedings were initiated by the authorities pursuant to the application submitted by

the respondent No.1-Company on November 10, 2005 along with the in-principle approval given by the Ministry of Commerce and Industries, Government of India dated October 21, 2005 and as the State authorities have acted as per the provisions of law applicable in the case of acquisition of land for companies, the petitions should not be entertained. It is mentioned in the reply that the area of the Special Economic Zone proposed to be established by the respondent No.1-Company is 4494.5 hectares, out of which 2597 hectares is private land; whereas the petitioners collectively hold 198 hectares land and, therefore, they are not entitled to challenge the acquisition proceedings as a whole. What is asserted in the reply is that no right much less any fundamental right of the petitioners is violated on account of any action taken and/or initiated by the respondents-authorities and, therefore, the petition should be dismissed. It is informed in the affidavit-in-reply that after receipt of the application of the respondent No.1-Company, the State Government had directed the District Collector, Jamnagar on December 2, 2005 to submit a report under Section 40 of the

Act and Rule-4 of the Rules, pursuant to which the deponent was authorised by the Collector to undertake inquiry and submit reports under the provisions of Section 40 of the Act and Rule 4 of the Rules. It is denied in the affidavit-in-reply that the District Collector had, without taking into consideration the various objections, mechanically forwarded reports to the State Government along with draft notification under Section 4 of the Act in respect of the lands of the aforesaid three villages, and it is asserted in the reply that the District Collector, after duly taking into consideration the facts emerging from inquiry reports submitted by the deponent, had forwarded his own reports to the State Government on May 15, 2006 based on independent application of mind and appreciation of facts along with proposal for application of draft-notifications under Section 4 of the Act. It is further mentioned in the reply that the State Government on May 30, 2006, after duly taking into consideration the reports submitted by the Collector and the inquiry conducted by the deponent, consented for acquisition of the lands and thereafter issued notifications dated June 2, 2006

under the provisions of Section 4 of the Act, which cannot be regarded as illegal. According to the reply-affidavit, before issuance of notifications under Section 4 of the Act, relevant documents and inquiry reports were also placed before the Land Acquisition Committee for its opinion, which consisted of four Senior Officers of the Government and, therefore, the State authorities have duly complied with all the requirements of law before issuance of notifications under Section 4 of the Act. The deponent of reply-affidavit has asserted that he was duly authorized by the District Collector, Jamnagar to undertake inquiries under Section 4 of the Act and Rule 4 of the Rules and accordingly, inquiries were conducted by him, after which reports were submitted before the District Collector, Jamnagar for appropriate action. The deponent of the affidavit-in-reply has referred to Section 52-A of the Act and has asserted that the respondent No.3 i.e. the Collector, Jamnagar is authorized and empowered to delegate his functions and, therefore, inquiries conducted by the deponent and the reports submitted by him to the District Collector cannot be

regarded as illegal. It is further asserted in the reply that without prejudice to the contention that the deponent was duly authorized to undertake inquiries under the delegated powers, the District Collector had submitted independent reports to the State Government and there is no breach of the statutory provisions at all. It is mentioned in the reply that Section 4 notifications can be put into force even before consent is obtained from the Government and agreement is executed between the Company and the Government, and this legal position has been made crystal clear by the decision of Division Bench of this Court in ***Pratapsang Naranji Jadeja vs. State of Gujarat & Ors, 1998(1) GLH 499***. According to the affidavit-in-reply, after undertaking inquiries and duly taking into consideration all the relevant aspects including report submitted by the District Agricultural Officer and report submitted by the District Inspector of Land Records, Jamnagar as well as communication of the respondent No.1-Company dated March 17, 2006, the deponent prepared and submitted reports to the District Collector, which are not contrary to the

provisions of the Act. It is mentioned in the reply that the Government of India has announced EXIM Policy relating to Special Economic Zone with a view to augmenting infrastructural facilities for export production; whereas the Central Government has offered various incentives and facilities to the developer of the Zone as well as to the industrial units to be set up in the Zone and, therefore, issuance of notifications under Section 4 of the Act should not be regarded as illegal, nor should they be regarded for the benefits of developer, who, according to the petitioners, is engaged in real estate business. After referring to the reports submitted under Section 40 of the Act and Rule 4 of the Rules, which are challenged in the petitions, it is mentioned in the reply that the deponent, after proper application of mind and scrutiny of the records available as well as after undertaking inquiry as contemplated under the provisions of law, had prepared reports which are just and legal. What is mentioned in the reply is that the petitioners were afforded reasonable opportunity of hearing in the proceedings under the Act and that with respect

to the land-owners of Village Navagam, public hearing was arranged on April 10, 2006, whereas in respect of land-owners of Villages Kanalus and Padana, hearings were arranged on April 12, 2006 and April 18, 2006 respectively. According to the affidavit-in-reply, at the time of hearing, oral as well as written objections and claims of the respective parties were collected and considered and, therefore, reports prepared cannot be termed as contrary to the principles of natural justice. It is claimed in the reply that after receipt of entire record and the reports prepared by the deponent after undertaking inquiry, the District Collector prepared reports after scrutiny and forwarded the same to the State Government and, therefore, it is wrong to state that the provisions of law were not followed before forwarding the reports to the State Government. After denying the allegation made by the petitioners that inquiry under Section 40 of the Act is nothing, but, an empty formality and an eyewash, it is maintained in the reply that the deponent had independently applied his mind and after undertaking inquiries into the issue on hand, prepared reports under the

provisions of the Act and submitted the same before the District Collector. It is pointed out in the reply that the allegation regarding a purported high level commitment having been given by the State Government regarding acquisition of lands for the respondent No.1-Company, is vague, without material particulars and, therefore, it should be ignored by the Court. According to the affidavit-in-reply, all the procedural requirements, which are required to be followed, were scrupulously adhered to by the authorities and, therefore, the petitions, which have no substance, should not be entertained. According to the affidavit-in-reply, the respondent No.1-Company had submitted its report before the deponent on March 17, 2006 stating therein that it had made efforts to negotiate with the respective land-holders, but, its efforts had not yielded positive results and, therefore, the conclusion arrived at by him that the Company had made efforts to negotiate with the respective land-holders, but, its efforts had not yielded positive results, cannot be regarded as erroneous. According to the deponent, the closer scrutiny of entire record clearly reveals that

specific industries likely to set up their industries in SEZ will have reasonable and specific requirement of lands and, therefore, issuance of notification under Section 4 of the Act cannot be regarded as illegal. After emphatically denying the allegation that at the time of negotiations by the Company with the land-owners, the deponent was present, it is asserted in the reply that it is not correct on the part of the petitioners to state that so-called negotiations had taken place twice in his presence. After denying the allegation that relevant record was not considered for concluding that reasonable price was offered by the respondent No.1-Company, it is mentioned that Jantri and the sale-price of the lands for past five years were taken into account for arriving at the aforesaid conclusion. According to the deponent of the affidavit-in-reply, the petitioners did not adduce any material to support the price claimed by them in the proceedings before him and, therefore, it is wrong to state that the conclusion arrived at by him that reasonable price was offered by the respondent No.1-Company to the land-owners is illegal. It is mentioned in the reply

that not only relevant factors were taken into consideration while preparing and submitting reports to the District Collector, but, recommendations of the Principal Chief Industrial Adviser to the State Government and other materials were also taken into consideration before preparing the reports. After emphatically denying the allegations made by the petitioners that inquiries were conducted and reports were prepared as per dictum of higher authorities, it is asserted that baseless allegations have been levelled by the petitioners, which should be ignored by the Court. After emphasizing that approval/establishment of SEZ is, in fact, subject to the land acquisition proceedings, it is asserted in the reply that in-principle approval does not truncate jurisdiction of the authorities from making necessary inquiries under the provisions of the Land Acquisition Act. It is mentioned in the reply that negotiations had been going on between the land-owners and the Company much prior to the date fixed for inquiry and the petitioners were expected to produce relevant material to support the price quoted by them, but,no such material was produced and as it

was neither reasonable nor proper to adjourn the proceedings at the behest of few persons, in view of nature of the proceedings and large number of persons involved, it is wrong to state that sufficient opportunity of hearing was not afforded to the petitioners. The deponent has asserted that what is required to be determined is whether the Company had made reasonable efforts to get said lands by negotiation on payment of reasonable price and as price offered by the company was not found to be absurdly low or unreasonable price in view of the materials on record so as to warrant an inference that the said offer did not tantamount to reasonable efforts for getting lands by negotiation, the reports submitted by the deponent should be accepted. After denying the allegation that payment of compensation in the event the lands of the petitioners are acquired, is not adequate, it is asserted that no right of the petitioners much less the right guaranteed under Article 21 of the Constitution is committed breach of by the respondents. According to the reply-affidavit, the respondent No.3 i.e. Collector, Jamnagar submitted his reports to the

State Government on May 15, 2006, after which consent of the appropriate Government for acquisition was granted on May 30, 2006, whereas notification under Section 4(1) of the Act was issued which was published in the Official Gazette on June 2, 2006 and, therefore, the petitions should not be entertained. It is also mentioned in the reply that the objections received from the persons interested in the lands were considered after affording an opportunity of hearing on August 8, 2006 and August 11, 2006 before forwarding the reports to the State Government as contemplated under Section 5(A-2) of the Act on August 21, 2006; whereas agreement has been executed with the respondent No.1-Company on August 14, 2006 and, therefore, the petitions should be dismissed.

9. Mer Nathabhai Arjanbhai, who is petitioner No.7, has filed rejoinder against the affidavit-in-reply filed by the respondent No.1-Company as well as affidavit-in-reply filed on behalf of the respondent Nos.2,3 & 4. Over and above denial of averments made in affidavits-in-reply of the respondents, by an

large, what is stated in the petition is reiterated in the rejoinder. Under the circumstances, this Court is of the opinion that it is not necessary to refer to the rejoinder of the petitioners in detail.

10. Mr.Paresh, son of Shambhuprasad Davey, who is authorised signatory of the respondent No.1-Company has filed affidavit-in-sur-rejoinder on behalf of the respondent No.1 stating, inter-alia, that the State Government, after considering the report of the Deputy Collector, Jamnagar forwarded under sub-section (2) of Section 5A of the Act, has issued notifications under Section 6 of the Act declaring that the lands specified in the Schedule thereto are needed for public purpose of setting up a product specific Special Economic Zone for petroleum and petrochemicals, which is perfectly legal. After denying the allegation that the exchequer will be put to huge financial loss or that most of the labour laws are not applicable or that the phenomenon of giving the benefits under the SEZ Act is against the interest of public at large, it is mentioned that there is no connection between the recommendation

made by the Government of Gujarat and the land acquisition proceedings, because the scheme of SEZ Act envisages initial recommendation by the State Government and by the Government of India to the Project, which is subject to the land being acquired under the provisions of the Act. It is mentioned in the reply that the provisions of the Land Acquisition Act have been strictly complied with by the authorities before issuing the notifications under Sections 4 & 6 of the Act and, therefore, it is futile to suggest that the Deputy Collector, or for that matter, the respondents-authorities have only performed an empty formality as alleged. What is mentioned in the sur-rejoinder-affidavit is that the respondent No.1-Company had made serious efforts for obtaining lands directly from the land-owners through negotiations by offering a reasonable price, and the price offered was reasonable, which is evident from the fact that the price offered by the respondent-Company is higher than the average sale price of the lands of last five years and prevailing Jantri price of the sale-transactions of lands of village Navagam, Kanalus, Padana, Dera Chhikari and Kana Chhikari. The

deponent of the affidavit-in-sur-rejoinder has produced documents in support of the above-mentioned plea at Annexure-I to the reply. After denying the allegation that the Government has fixed substantially higher price for allotting waste and Gauchar land, it is stated in the sur-rejoinder that price of the land referred to in the document, which is at Page-173, cannot be compared with the price of land offered by the respondent-Company, inasmuch as the land referred to in the said document at Page-173 is a piece of land near the State Highway No.25 allotted by the Government for industrial use, whereas the lands proposed to be acquired, for which the respondent-Company had offered the reasonable price, is made of one large compact area of agricultural undeveloped land situated away from the developed area. After mentioning that there is a vital diminutive peculiarities of the lands proposed to be acquired, it is stated that the land referred to in the document at Page 173 is of village Motikhavadi, which is not under acquisition. It is mentioned that M/s.Reliance Industries Limited was allotted Government waste lands in villages Navagam

and Kanalus at an approximate rate of Rs.18/- to Rs.20/- per sq.mt., and that the Deputy Collector, Jamnagar, after considering the provisions of the Act, has made an award under Section 11(1) of the Act for the lands of Navagam village by fixing an amount of compensation at the rate of Rs.18/- per sq.mt., which also shows that the price offered by the respondent No.1-Company was much higher than the market price. The deponent of affidavit-in-sur-rejoinder has produced necessary documents to substantiate this plea at Annexures II & III to the reply. After denying the allegation that the respondent No.1-Company is trying to manipulate the affairs for obtaining the lands of the agriculturists at throwaway price, it is stated that price offered by the respondent No.1-Company at the stage of Rule-4 inquiry, was much higher than the prevailing Jantri price of agricultural lands and the average sale price of lands situated in the area and as no record/document was produced by the petitioners during the negotiations to show that what was offered by the respondent No.1-Company was not reasonable, the plea that sincere efforts were not made to obtain

lands by private negotiations by offering fair market price, should not be accepted. After denying the allegation that SEZ area was fixed long back and that the fate of the petitioners was fixed long back before the initiation of the proceedings, it is mentioned that the respondent-Company has scrupulously followed the provisions of the Act and the Rules, and the State government has also strictly complied with all the provisions of the Act and the Rules. It is emphasized in the reply that circumstances prevailing at the stage of admission of Special Civil Application No. 10858 of 2001 and the circumstances of the present petition are not similar, and it is pointed out that the Company had carried out genuine negotiations with the land-owners for obtaining lands by offering market price then prevailing. What is asserted in the reply is that in view of the present acquisition proceedings, none of the village sites (Gamtal) are to be acquired and as proposed acquisition is only of the agricultural lands of the petitioners as well as other land-holders of the five villages, there would be no displacement of the people residing in the village

sites (Gamtal) and, therefore, the question of rehabilitation of displaced persons does not arise. It is mentioned in the reply that petition challenging Section 4 and Section 6 notifications is misconceived and, therefore, the same should be dismissed.

11. Mr.Laljibhai Balabhai Bambhaniya, discharging duties as Deputy Collector, Jamnagar, has filed affidavit-in-reply on behalf of the respondents to the amendment carried out by the petitioners. In the said reply, it is denied that reports under the provisions of Section 5A of the Act were prepared with a view to favouring the respondent No.1-Company, or to over-reaching the process of the Court. It is claimed in the reply that issuance of notifications under the provisions of Section 6 of the Act is as per the provisions of law, which cannot be treated as amounting to over-reaching the process of law. According to the deponent, while preparing the reports and submitting the same under the provisions of Section 5A of the Act, he had taken into consideration all the relevant aspects, and it is

denied that the respondents-authorities had acted in collusion with the respondent No.1-Company. It is further mentioned in the reply that while preparing reports under Section 5A of the Act, objections raised by the concerned parties i.e. affected persons including the petitioners were taken into consideration. What is asserted in the reply is that the order appointing the deponent as officer to undertake exercise under Section 5A of the Land Acquisition Act is as per the provisions of law. It is pointed out in the reply that the deponent was appointed to prepare report under Section 5A of the Act by the State Government as per the provisions of the Act and, therefore, hearing of objections and preparation of reports under Section 5A of the Act cannot be regarded as illegal. After emphatically denying the allegation that exercise undertaken by the deponent under Section 5A was only an empty formality, it is mentioned that while preparing reports under Section 5A of the Act, all the requirements were scrupulously followed and, therefore, preparation of the reports and submitting the same to the State Government cannot be termed or

treated as merely an empty formality. It is asserted that the deponent had, after carefully examining the materials, prepared the reports and, therefore, it is wrong to state that the deponent was predetermined to make the reports favourable to the respondent No.1-Company while undertaking the exercise under the provisions of Section 5A of the Act. It is further mentioned in the reply that the reports submitted by the deponent under the provisions of Section 40 of the Act and Rule-4 of the Rules are as per the provisions of law, and while preparing those reports, the deponent had taken into consideration all the relevant aspects. It is mentioned in the reply that after duly taking into consideration the inquiry reports prepared by the deponent and submitted to the District Collector and the reports of the District Collector, notifications were issued by the State Government under the provisions of Section 4 of the Act on June 2, 2006, whereby the deponent was authorized to perform duties as Collector and to act under Section 5A of the Land Acquisition Act and, therefore, the reports prepared by the deponent are just, proper and legal.

12. Mr.Laljibhai Balabhai Bambhaniya, discharging duties as Deputy Collector, Jamnagar, has filed affidavit-in-sur-rejoinder on behalf of the respondents to the rejoinder filed by the petitioners stating, inter-alia, that while carrying out inquiry under Section 40 of the Act and Rule-4 of the Rules, he had scrupulously followed all the procedural requirements and after taking into consideration all the relevant aspects, reports were prepared. It is mentioned in the reply that the Principal Chief Rural Adviser is not required to hear the petitioners because one of the duties cast upon the Principal Chief Adviser is to give necessary opinion after taking into consideration the proposal of an industry for setting up the Special Economic Zone and before the Principal Chief Adviser, the petitioners were neither necessary parties nor proper parties. What is mentioned in the reply is that the then State of Saurashtra was first of all merged into Greater Mumbai State in the year 1956 and thereafter at the time of bifurcation of the State, as contemplated by the provisions of the Bombay Reorganization Act,

1960, the State of Gujarat came into existence, and as territory of Saurashtra being made part of the State of Gujarat, laws applicable to the State of Gujarat are also applicable to the entire State of Gujarat, including Saurashtra region, which is part of the State of Gujarat and, therefore, it is not correct to contend that the provisions of Section 52A of the Act do not apply to the Saurashtra region. It is asserted in the affidavit-in-sur-rejoinder that the reports produced by the petitioners at Annexures A, C & E were prepared after duly taking into consideration all the relevant aspects, and do not indicate, in any manner, that the same were result of non-application of mind on the part of the deponent. What is mentioned in the Sur-Rejoinder is that the State authorities have acted as per the provisions of law and have scrupulously followed the procedural requirements for carrying out the acquisition proceedings in respect of the land in question and, therefore, acquisition proceedings do not stand vitiated. After denying the allegation that the deponent had observed empty formality by holding inquiry, it is stated that the deponent had

undertaken task of undertaking inquiry and preparing reports in a transparent manner whereby all the requirements were scrupulously followed and, therefore, it is wrong to suggest that the deponent had observed an empty formality by holding inquiry. It is averred in the Sur-Rejoinder that the deponent had taken into consideration Jantri prepared by the competent authority as well as Index for last five years' sale transactions while preparing the reports which are subject matter of challenge in the captioned petition and, therefore, they cannot be regarded as illegal. It is mentioned that the deponent had considered the report of the District Agricultural Officer, copy of which is produced at Annexure-III to the reply. It is mentioned in the Sur-Rejoinder that so far as determination of compensation in respect of the lands under acquisition is concerned, the same can be determined by the Land Acquisition Officer at the time of making award under Section 11 of the Act, and as the petitions are mainly filed with intention to get more compensation, the same should not be entertained. After denying the allegation that the deponent has

miserably failed to take into consideration the objections while coming to the conclusion regarding compliance made by the respondent-Company, it is mentioned that the deponent had objectively recorded all facts and taken into consideration the materials available on record before making reports to the District Collector. What is stated in the Sur-Rejoinder is that the District Collector had, after duly verifying the contents of the reports made by the deponent, prepared his own reports after proper application of mind and had submitted the same to the State Government and, therefore, it is not correct to state that there was no independent application of mind by the Collector while forwarding reports to the State Government. In the Sur-Rejoinder, it is denied that the deponent was predetermined to make favourable reports to respondent No.1-Company, and it is mentioned that the objections raised by the land-owners were properly taken into consideration by him. It is pointed out in the Sur-Rejoinder that adequate opportunities were given to the concerned parties including the petitioners herein and thereby the deponent had complied with the rules of

principles of natural justice before preparing the reports under Section 5-A(2) of the Act and submitting the same to the State Government. It is asserted in the Sur-Rejoinder that under the guise of challenging the acquisition proceedings on the alleged ground of breach of the provisions of Section 40 of the Act and Rule-4 of the Rules, the petitioners have emphasized the aspect that the price offered for acquisition of land was ridiculously low; whereas in the second breath, stated that they have not approached the Court for obtaining more compensation, and in view of this contradictory stand taken by the petitioners, the petitions should not be entertained.

13. Mr.Bharatsinh K. Zala, who is petitioner No.33 in Special Civil Application No.12943 of 2006, has filed further affidavit-in-reply to the affidavit-in-sur-rejoinder filed on behalf of the respondent No.1 and the affidavit of the Deputy Collector to the amendment carried out by the petitioners as well as the affidavit-in-sur-rejoinder filed by the Deputy Collector. In the said further

affidavit-in-reply, it is mentioned that no case is made out for invoking the provisions of Section 40 of the Act and that the exchequer would be put to huge financial loss whereas the labourers engaged in SEZ will have practically no protection of labour laws and, therefore, the reliefs claimed in the petition should be granted. It is mentioned therein that after the approval of SEZ by the Central Government and the State Government, the acquisition of the land is merely a formality and, therefore, the same should be set aside. What is averred in the said reply is that the petitioners were prevented from producing the relevant documents by the respondent No.2 when the request for adjournment of the proceedings was refused and reference made to the provisions of Sections 23 and 24 of the Act is absolutely irrelevant. It is stated in the reply that the farmers losing the entire agricultural holdings and substantial part of the agricultural holdings, must be rehabilitated before initiation of the land acquisition proceedings because no person can survive in his residence if all sources of his livelihood are cut off and as the respondent No.1 has failed to

rehabilitate the petitioners, acquisition proceedings should be quashed. It is stated in the reply that the documents produced by the respondents are irrelevant and should not be considered while appreciating the contention of the petitioners that there was non-application of mind by the Deputy Collector for coming to the conclusion that the respondent No.1 had genuinely negotiated for purchasing the land by private negotiations. It is claimed in the reply that the report under Section 5(A) of the Act is made by the Deputy Collector whereas notification under Section 6 of the Act are issued by the Government *mala fide* with a view to overreaching the process of the Court and, therefore, they should be set aside. After mentioning that the claim made by the Deputy Collector that he had taken into consideration the documents at Annexure-I, Annexure-II and Annexure-III should not be upheld because the reference to those documents is an afterthought, it is stated that the statutory authority cannot justify the order on the basis of any material or ground not referred to in the report or order. What is mentioned in the reply is that there is non-compliance of the provisions of

Section 40 of the Act and Rule 4 of the Rules and, therefore, the question of availability of further opportunity to the petitioners to represent the case for better compensation is no ground to justify express breach of section 40 of the Act and Rule 4 of the Rules. It is asserted by the deponent of the reply that the petitioners have made out a case of violation of mandatory provisions of law under Articles 19, 21, 300(A) of the Constitution and, therefore, the reliefs claimed in the petitions should be granted. What is averred in the reply is that the Deputy Collector is not justified in stating that the extent of the lands held by the petitioners is comparatively small portion of the lands with reference to the total area sought to be acquired and, therefore, are not entitled to challenge the acquisition proceedings. In the reply, it is mentioned that the State Government was determined to acquire the lands and the conclusion to acquire the lands was forgone before initiation of land acquisition proceedings under the Act as a result of which, issuance of notifications under Section 4 of the Act as well as publication of declarations under

Section 6 of the Act are bad in law. According to the deponent of the reply, the Deputy Collector was pre-determined to make reports favourable to the respondent No.1 and as reasonable opportunity to represent the case was not afforded to the petitioners, his report should be set aside. What is highlighted in the reply is that the petitioners have not claimed higher compensation in the petition and as the petitioners have made out case of breach and violation of mandatory provisions contained in Section 40 of the Act and Rule 4 of the Rules, reliefs prayed for should be granted. After asserting that the documents produced by the respondent No.3 on Pages 635 to 655 are irrelevant in respect of issues involved in the petitions and, therefore, should not be taken into consideration by the Court, it is mentioned in the reply that most of the documents are not referred to by the Deputy Collector in the reports under Section 40 of the Act and/or Rule 4 of the Rules and, therefore, the respondent No.2, who is statutory authority, is not entitled to supplement the order or reports on the basis of grounds, which were not mentioned in the order or reports or on the

basis of materials, which were not referred to in the order or reports. According to the deponent of the reply affidavit, reference to the documents is made with a view to supporting a decision, which was originally taken without any rational basis and, therefore, those reports should be ignored by the Court. By filing the affidavit, the deponent has prayed to grant the reliefs claimed in the petition.

14. The Order-Sheet would indicate that the matters were heard on different dates such as; August 23, 2006; September 1, 2006; September 2, 2006; September 4, 2006; September 18, 2006; September 19, 2006; September 20, 2006; September 21, 2006; and September 22, 2006.

15. This Court has heard Mr.M.C.Bhatt, learned Senior Advocate for the petitioners, and Mr.Mihir H. Joshi, learned Additional Advocate General for the respondent Nos.2 to 4 as well as Mr.S.N.Shelat, learned Senior Advocate and Mr.K.S.Nanavati, learned Senior Advocate for the respondent No.1-Company, at great length and in detail. This Court has also

considered the pleadings of the parties as well as all the documents which have been brought on record of the petition along with the petition itself; affidavits-in-reply; affidavits-in-sur-rejoinder, etc. It may be mentioned that initially when the matter was argued, inquiry under Section 5-A of the Act was not conducted and, therefore, certain arguments were advanced by the learned counsel for the petitioners regarding validity of the inquiries conducted under Section 40 of the Act and Rule 4 of the Rules, etc., which were replied by the learned counsels for the respondents. However, during the course of hearing of the petitions, inquiry under Section 5-A of the Act was completed after which reports were submitted to the State Government under Section 5-A(2) of the Act on the basis of which three different declarations relating to three different villages were made by the State Government under Section 6 of the Act, which were duly published in the official gazette. Therefore, permission to amend the petitions was sought, which was granted, after which the reports submitted under Section 5-A(2) of the Act as well as declarations made under Section 6

of the Act were challenged and, therefore, the nature of the arguments advanced at the Bar had basically changed. The arguments of the learned advocates for the parties had concluded by the close of the day on September 22, 2006 and, therefore, the learned advocates for the parties were informed that the Court would proceed to dictate the judgment in the open Court on September 25, 2006 as September 23 and 24, 2006 were holidays. On September 25, 2006, Mr.M.C.Bhatt, learned Senior Advocate for the petitioners, presented his precise submissions in writing, which include the contentions, which were raised at the Bar up to September 22, 2006 as well as the contentions raised on behalf of the petitioners in their pleadings. Similarly, Mr.Mihir H. Joshi, learned Additional Advocate General, presented his precise answers to the points urged by Mr.M.C.Bhatt, learned Senior Advocate for the petitioners, at the Bar. The learned Senior Advocates for the respondent No.1 have also presented written submissions with a bunch of judgments on which reliance is placed on behalf of the respondent No.1. Therefore, the written submissions presented by the learned Senior Advocates

for the parties are ordered to be taken on record of Special Civil Application No.12943 of 2006. In view of the written submissions presented by Mr.M.C.Bhatt, the learned Senior Advocate for the petitioners, this Court proposes to consider those submissions *in* seriatim as far as possible.

16. The first contention raised by Mr.M.C.Bhatt, learned Senior Counsel with Mr.R.D.Raval, learned advocate for the petitioners was that as per Section 40(2) of the Act, inquiry under Section 40 of the Act has to be held by the officer to be appointed by the appropriate Government and as the Collector, Jamnagar, was appointed as officer by the appropriate Government under Section 40(2) of the Act when he was asked to make inquiry under Section 40 of the Act and Rule 4 of the Rules and submit report, he had no power or jurisdiction to delegate his functions to the Deputy Collector under Section 52-A of the Act because Section 52-A of the Act provides for delegation of powers and functions of the "Collector", which expression is defined in Section 3(c) of the Act whereas the officer appointed under

Section 40(2) is not Collector within the meaning of Section 3(c) of the Act and, therefore, the inquiry held by the Deputy Collector under Section 40 of the Act as well as the reports dated April 29, 2006 submitted by him should be treated as null and void. It was pleaded that, in its application to the State of Gujarat, the words "either on the report of the Collector under Sec. 5-A, sub-section (2), or" appearing in Section 40(1) of the Act are omitted vide Section 19 of the Gujarat Act No.20 of 1965 and, therefore, notification under Section 4 of the Act could not have been issued on the basis of null and void reports submitted by the Deputy Collector, Jamnagar more particularly when void inquiry made under Section 40 of the Act does not get legalized or cured in an inquiry to be made under Section 5A of the Act and, therefore, the notifications published under Section 4 of the Act should be quashed. What was submitted by the learned counsel for the petitioners was that the District Collector, Jamnagar, had not retained any power/control over the inquiries to be conducted under Section 40 of the Act and Rule 4 of the Rules, after delegating the

powers/functions to make inquiries to the Deputy Collector and as the Collector had simply forwarded the reports received from the Deputy Collector to the State Government without signing the same and without applying his mind or using his discretion or examining the merits of the inquiries held and/or reports submitted by the Deputy Collector, the land acquisition proceedings could not have proceeded further on the basis of purported inquiry which was held by the Deputy Collector without any authority or power or jurisdiction and, therefore, the entire acquisition proceedings should be quashed on this ground alone.

16.1 As against this, Mr.Mihir H.Joshi, learned Additional Advocate General, with Mr.S.S.Shah, learned Government Pleader and Mr.Siraj Gori, learned Assistant Government Pleader, for the State Authorities, contended that it is not necessary for the Collector to personally examine all the details himself which are mentioned in Section 40 of the Act and Rule 4 of the Rules but he can certainly call for the reports from the Deputy Collector as the

circumstances of a case may demand and act on the same in view of decision of the Supreme Court in ***M/s.Larsen & Toubro Limited, etc. vs. State of Gujarat & Ors., A.I.R. 1998 SC 1608***. What was pleaded on the basis of the principles laid down in ***Pradyat Kumar Bose vs. The Hon'ble Chief Justice of Calcutta High Court, A.I.R. 1956 SC 285*** and ***State of Bombay (Maharashtra) vs. Shiv Balak Gaurishanker Dube & Ors., A.I.R. 1965 SC 661***, was that the Collector could not have said to have delegated his functions merely by deputing a responsible and competent official to inquire into the matters specified in Section 40 of the Act and Rule 4 of the Rules and report to him, as a result of which issuance of notifications under Section 4 of the Act cannot be regarded as illegal. It was pointed out to the Court that the Collector had retained the powers to approve or disapprove the reports by calling upon the Deputy Collector to submit report to himself and since the general control over the activities of the Deputy Collector is exercised by the Collector, there was in the eye of law no delegation at all. It was contended that the report of the Collector indicates that after

application of mind to the facts emerging from the inquiries conducted by the Deputy Collector, the Collector had approved and acted upon the reports of the Deputy Collector, which is quite evident from the recommendations made at the conclusion of the reports to the appropriate Government to take necessary actions for acquisition of the lands for the public purpose of SEZ and, therefore, it is not correct to contend that the Collector had mechanically accepted the reports submitted by the Deputy Collector and forwarded the same to the State Government. In the alternative, it was argued by Mr.Mihir H.Joshi, learned Additional Advocate General, that the Collector is invested with the statutory functions of conducting inquiry under Section 4 of the Rules whereas by virtue of his appointment made by the appropriate Government, he was entitled to make inquiry under Section 40 of the Act and, therefore, in view of the provisions of Section 52-A of the Act, which empowers a Collector to delegate any of his power and functions under the Act to the Deputy Collector, the Collector, Jamnagar, was authorised to delegate his powers and functions under Section 40 of

the Act as well as Rule 4 of the Rules to the Deputy Collector and, therefore, the reports submitted by the Deputy Collector to the Collector cannot be termed as *void ab initio.* What was stressed was that if Section 52-A is construed as not specifically providing for delegation of functions of holding the inquiry under Section 40 of the Act, such delegation is not impermissible since there is no presumption against sub-delegation for exercising administrative powers and the scheme of the Act clearly indicates by virtue of Section 52-A, a legislative policy permitting such delegation whenever required. After explaining that the purpose of the inquiry under Section 40 of the Act is for grant of consent by the appropriate Government so that the provisions of Sections 6 to 16 and Sections 18 to 37 of the Act can be put into force to acquire lands for the company whereas the purpose of inquiry under Rule 4 of the Rules is to enable the appropriate Government to make declaration under Section 6 of the Act, it was argued that retention of power to put into force the provisions of the Act for acquiring the lands of the company and to make declaration under Section 6 of

the Act by the appropriate Government, leave the manner and form of the inquiry entirely at discretion of the Collector and as there is no expression or implied bar to sub-delegation of such inquiry in favour to the Deputy Collector, the reports submitted by the Deputy Collector should not be regarded as illegal.

16.2 Mr.S.N.Shelat, learned Senior Advocate, and Mr.K.S.Nanavati, learned Senior Advocate, with Mr.Keyur D. Gandhi, learned advocate for the respondent No.1, argued that apart from the tenor of the letter dated December 2, 2005, what was contemplated by the said letter was to instruct the Deputy Collector to forward report in respect of the matters specified in Section 40 of the Act as well as Rule 4 of the Rules and nothing further, which means that there was no delegation of powers or functions of the Collector to the Deputy Collector either under Section 40 of the Act or Rule 4 of the Rules. It was argued on behalf of the respondent No.1 that the satisfaction to be reached by the Government that the acquisition is needed for the public purpose was

never delegated by the appropriate Government either to the Collector or the Deputy Collector and as the satisfaction of the Collector or for that matter, the satisfaction of the Deputy Collector is essentially on fact finding inquiry namely that what the company is doing, the acquisition proceedings cannot be treated as null and void as claimed by the learned counsel for the petitioners. In the alternative, it was submitted on behalf of the respondent No.1 that even if instruction given by the Collector to the Deputy Collector to make inquiry and submit report under Section 40 of the Act and Rule 4 of the Rules is treated as sub-delegation, the same is permissible by the very scheme and nature of the functions to be undertaken and, therefore, notifications issued under Section 4 of the Act are not liable to be quashed. It was asserted that Section 52-A of the Act, as applicable to the Saurashtra region of the State of Gujarat, expressly permits delegation of powers and functions by the Collector in favour of the Deputy Collector and, therefore, the reports submitted by the Deputy Collector cannot be termed as *void ab initio.* What was asserted was that defect, if any,

during the course of inquiry conducted under Section 40 of the Act gets cured during the course of inquiry to be undertaken under Section 5(A) of the Act and as the petitioners had raised the contention during the inquiry undertaken under Section 5(A) inquiry to the effect that acquisition is not for a public purpose, which was considered by the competent authority, reports submitted by the Deputy Collector under Section 40 of the Act cannot be treated as having vitiating effect on the notifications issued under Section 4 of the Act.

17. Before dealing with the above mentioned contentions, it would be relevant to notice the scheme of the Act and relevant statutory provisions.

17.1 In its application to the State of Gujarat, the expression "Collector", which is defined in Section 3(c) of the Act, reads as under:

> *"(c) the expression "Collector" means the Collector of a district, and includes any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act:"*

17.2 Section 39 of the Act mandates the Government that do not put in force the provisions of Sections 6 to 16 and Sections 18 to 37 in order to acquire the lands for any company unless the previous consent of the appropriate Government is obtained and the Company has executed the agreement. In its application to the State of Gujarat, the words "*either on the report of the Collector under Sec.5-A, sub-section (2) or*" have been deleted by Section 19 of Gujarat Act No.20 of 1965. Section 40 of the Act, as applicable to the State of Gujarat, therefore, reads as under:

> "***40. Previous inquiry.-*** *(1) Such consent shall not be given unless the appropriate Government be satisfied by an inquiry held as hereinafter provided,-*
>
> *(a) that 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*
>
> *(aa) that such acquisition is need for the construction of some building or work of a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or*
>
> *(b) that such acquisition is needed for the*

construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, i the same manner as is provided by the Code of Civil Procedure, 1908 (5 of 1908) in the case of a Civil Court."

17.3 In exercise of the powers conferred by Section 55 of the Land Acquisition Act 1894, the Central Government has made rules for the guidance of the State Government and the Officers of the Central Government and of the State Governments, namely:- the Land Acquisition (Companies) Rules 1963. Rule 4 of the Land Acquisition (Companies) Rules, 1963 reads as under:

"4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings.- *(1) Whenever a Company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely-*

(i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition;

(ii) that the company has made all reasonable efforts to get such lands by negotiations with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii)that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the company is in a position to utilise the land expeditiously; and

(vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity to make any representation in this behalf, hold an inquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall -

(i) in any case where the land proposed to be acquired is agricultural land consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;

(ii) determine, having regard to the provisions of Sections 23 and 24 of

the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the Company; and

(iii)ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation.- For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under sub-rule (2) the Collector shall submit the report to the appropriate Government and a copy of the same shall be forwarded by the Government to the Committee.

(4) No declaration shall be made by the appropriate Government under Section 6 of the Act unless -

(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted under Section 5-A of the Act; and

(ii) the agreement under Section 41 of the Act has been executed by the company."

17.4 The two inquires with which this Court is principally concerned, are; one under Section 40 of the Act and another under Rule 4 of the Rules. If Section 40 of the Act is considered, it is for the purpose of consent after which the appropriate Government would be entitled to put into motion the acquisition process. Section 39 of the Act restrains the appropriate Government from putting into force the provisions of Sections 6 to 16 and 18 to 37 till the appropriate Government grants its consent. Thus, what is required is consent of the appropriate Government. The next stage provided by the statute is as to how this consent is to be given. The Legislature states that no such consent shall be given unless the appropriate Government is satisfied after an inquiry that the acquisition is for the public purpose. Thus, what is postulated by Section 40 of the Act is the satisfaction of the appropriate Government that the land is needed for public purpose on the basis of inquiry to be made in the manner prescribed under Section 40 of Act. However, the entire contention of the petitioners on the point of sub-delegation is based on the footing that the

Deputy Collector determines the public purpose which is totally incorrect and fundamentally erroneous. There is clear distinction as regards discretion vested by the Legislature. The provisions of Section 40 of the Act provides that appropriate Government should be satisfied that the acquisition is needed for the public purpose and, thereafter it should give its consent for the acquisition. It is not the case of the petitioners that this satisfaction has been delegated by the appropriate Government either to the Collector or to the Deputy Collector. Therefore, inquiry of the nature contemplated by Section 40 of the Act has to be *per se* only on the facts. The satisfaction of the Collector or for that matter, the satisfaction of the Deputy Collector is essentially on facts. Further, opinion of none of them is binding on the Government and the reports are tentative in nature on the basis of which, the appropriate Government decides to grant or not to grant consent. Therefore, this Court is of the opinion that the fact finding inquiry can always be delegated when the principal power of satisfaction is retained by the appropriate Government.

17.5 The maximum *delegatus non potest delegare* does not enunciate a rule of law that knows no exception. It is a rule of construction which raises a presumption that '*a discretion conferred by a statute is prima facie intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this presumption may be rebutted by any contrary indications found in the language, scope or objection of the statute*'. Even where the statute is silent, sub-delegation may be upheld keeping in view the nature of the function or exercise of power by the sub-delegate. Again, administrative or ministerial functions-pure and simple-can be sub-delegated; such as, collecting data, gathering information, inquiring into charges; submitting reports, receiving representations, etc.

17.6 Having noticed the general principles governing sub-delegation, it would be necessary to discern the factual data emerging from the record of the case. The record shows that the Collector was directed by the appropriate Government to undertake

the inquiries contemplated by Section 40 of the Act read with Rule 4 of the rules. The Collector submitted his reports dated May 15, 2006 in respect of the lands of Village Navagam, Village Padana and Village Kanalus, to the State Government. These reports are to be found on Pages 406, 410 and 414 of the compilation. It may be mentioned that by an order dated December 15, 2005, the Collector instructed the Deputy Collector, Jamnagar, to make inquiries into the matters specified in Section 40 of the Act as well as Rule 4 of the Rules and submit reports to him. If Section 40(1)(aa) of the Act is analyzed, it becomes at once clear that on the basis of factual data and materials, the officer making inquiry has to ascertain whether such acquisition is needed for the building or work of a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose. Similarly on the basis of factual data placed by the parties or collected during the course of inquiry under Rule 4 of the Rules, the officer making the inquiry has to ascertain whether the company has made its best endeavour to find out lands in the locality suitable

for the purpose of the acquisition and other five matters enumerated in Rule 4 of the Rules. Thus, the Collector could not have said to have delegated his functions by deputing a responsible and competent official to undertake preparatory work and to take initial decision in the matters entrusted to him by retaining in his own hands the power to approve or disapprove decision after it has been taken by specifically asking the Deputy Collector to submit reports to him. The direction by the Collector to the Deputy Collector to undertake inquiry into factual aspects mentioned in Section 40 of the Act and Rule 4 of the Rules, therefore, cannot be considered to be delegation at all. There is no manner of doubt that the inquiries contemplated under Section 40 of the Act and Rule 4 of the Rules are of administrative nature, which are really concerned with collection of facts on the basis of which, the appropriate Government has to form its satisfaction as contemplated by Section 40(1) of the Act and, therefore, in absence of any express bar, the delegation of this nature of fact finding inquiry is permissible and not hit by the *vice* of impermissible

sub-delegation.

17.7 At this stage, it would be advantageous to refer to the decision of the Supreme Court in ***Union of India & Anr. vs. P.K. Roy & Ors., A.I.R. 1968 SC 850.*** In the said case, under the direction of the Central Government, both, the preliminary and final gradation lists, were prepared and published by the State Government. The question was whether there was delegation by the Central Government of any of its essential functions entrusted to it under the statute. The question has been answered by the Supreme Court in paragraph 10 of the reported decision as under:

> *10. In our opinion, the procedure adopted in this case does not contravene the provisions of Section 115 (5) of the said Act, because it was the Central Government which laid down the principles for integration, it was the Central Government which considered the representations and passed final orders, and both the preliminary and final gradation lists were prepared and published by the State Government under the direction and with the sanction of the Central Government. It is manifest that there has been no delegation by the Central Government of any of its essential functions entrusted to it under the statute. It was pointed out by Mr. Asoke Sen that in its letter dated April 3, 1957 the Central*

Government had intimated that the work of integration should be left to the State Government. But what was meant by that letter was that only the preliminary work of preparation of the gradation lists on the principles decided upon by the Central Government should be left to the State Governments concerned. It is clear that such work cannot be done by the Central Government itself since the necessary information regarding the officers can be obtained and tabulated only by the States concerned. It was also pointed out by Mr. Asoke Sen that the preparation of the provisional and the final gradation lists by the State Government constituted .a delegation by the Central Government. We do not think there is any substance in this argument. It is not disputed that the provisional and the final gradation lists were prepared by the State Government on the principles laid down by the Central Government itself subject to on change in the matter of determining seniority and the provisional gradation list was sent for approval of the Central Government together with representations made by the officers concerned for being dealt with and decided upon by the Central Government. The principle of the maxim "delegatus non potest delegare" has therefore no application to the present case. The maxim deals with the extent to which a statutory authority may permit another to exercise a discretion en trusted by the statute to itself. It is true that delegation in its general sense does not imply a parting with statutory powers by the authority which grants the delegation, but points rather to the conferring of an authority to do things which otherwise that administrative authority would have to do for itself. If, however, the administrative authority named in the statute has and retains in its hands general control over the activities of the person to whom it has entrusted in part the exercise of its statutory power and the control exercised by

the administrative authority is of a substantial degree there is in the eye of law no "delegation" at all and the maxim "delegatus non potest delegare" does not apply [See Fowler (John) and Co. (Leeds) v. Duncan. 1941-Ch 450]. In other words if a statutory authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own. In the context of the facts found in the present case we are of opinion that the High Court was in error in holding that there has been an improper delegation of its statutory powers and duties by the Central Government and that the final gradation list dated April 6, 1962 was therefore ultra vires and illegal. Even on the assumption that the task of integration was exclusively entrusted to the Central Government, we are of the opinion that the steps taken by the Central Government in the present case in the matter of integration did not amount to any delegation of its essential statutory functions. There is nothing in Sections 115 or 117 of the said Act which prohibits the Central Government in any way from taking the aid and assistance of the State Government in the matter affecting the integrations of the services. So long as the act of ultimate integrations is done with the sanction and approval of the Central Government and so long as the Central Government exercises general control over the activities of the State Government in the matter it cannot be held that there has been any violation of the principle "delegatus non potest delegare". For instance it was observed by this Court in Pradyat Kumar Bose v. Hon'ble Chief Justice of Calcutta High Court, 1955-2 SCR 1331 at p. 1345 = (AIR 1956

SC 285 at p. 291):

"It is well recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides - is the ultimate responsibility for the exercise of such power."

As pointed out by the House of Lords in Board of Education v. Rice 1911 AC 179 at p. 182' a functionary who has to decide an administrative matter, of the nature involved in this case. can obtain the material on which he is to act in such manner as may be feasible and convenient provided only the affected party "has a fair opportunity to correct or contradict any relevant and prejudicial material." The same principle was reiterated by Lord Chancellor in Local Government Board v. Arlidge 1915 AC 120 at p. 133 in the following passage.

"My Lords : concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its enquiry, must as I have said, be taken in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Minister. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his material vicariously through his officials, and he has discharged his duty if he sees that they obtain these

materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff.''

We accordingly reject the argument of Mr. Asoke Son on this aspect of the case and hold that the High Court was in error in holding that there was an improper delegation of its statutory power by the Central Government under Section 115 (5) of the said Act."

17.8 Applying the principles laid down by the Supreme Court in the above quoted decision to the facts of the present case, this Court finds that the fact-finding inquiry undertaken by the Deputy Collector at the instance of the Collector cannot be equated with discretionary power to be exercised either by the Collector or by the appropriate Government. The Deputy Collector was simply to record the facts and, thereafter, forward his initial conclusions in the form of reports to the Collector. The fact-finding inquiry undertaken by the Deputy Collector, pursuant to instructions given by the Collector, cannot be regarded as abdication of the powers by the Collector in favour of the Deputy Collector. It is relevant to notice that the general

control over the activities of the Deputy Collector is exercised by the Collector under the provisions of the Bombay Land Revenue Code. The Collector had retained power to approve or disapprove the report submitted by the Deputy Collector. The record does not indicate that the Collector had authorized the Deputy Collector to hold inquiry and send his report straightaway to the State Government. If that were so, it could have been a case of abdication of functions entrusted to the Collector, but when the Collector had asked the Deputy Collector to make a report to him, it means that the Collector had retained the control over the matters of inquiries to be conducted by the Deputy Collector. What is relevant to notice is that the inquiry to be conducted by the Collector was divided into two stages by him namely; (i) performing function of collection of data which he had entrusted to the Deputy Collector and (ii) to retain the powers to make report to the State Government on the basis of findings of his deputee. If the Collector agreed with the findings, it was not necessary for him to re-write in his report whatever the Deputy Collector had

said. He might make a few additions of his own. Therefore, even if the Collector in the instant case had not given any further independent reports or findings, that would not invalidate his report on the ground that he had abdicated his functions and/or that he had not applied his mind.

17.9 In ***Pradyat Kumar Bose (Supra),*** the appellant was the Registrar & Accountant General of the High Court at Calcutta on its original side. He was appointed to the post by the Chief Justice of the High Court. There were various charges against him and one of the Puisne Judges of the Calcutta High Court was deputed by order of the Chief Justice to make an enquiry and submit a report. Accordingly, the learned Puisne Judge of the Calcutta High Court had submitted his report to the Chief Justice after making inquiry. On the basis of the said report, the appellant was dismissed from service by the Chief Justice. One of the contentions, which was urged before the Supreme Court, was that even if the Chief Justice had power to dismiss, he was not, in exercise of that power, competent to delegate to another Judge

enquiry into the charges, but should have made the enquiry himself. While negativing the said contention, the Supreme Court has observed in paragraph 11 of the reported decision as under:

> *"11. The further subordinate objections that have been raised remain to be considered. The first objection that has been urged is that even if the Chief Justice had the power to dismiss, he was not, in exercise of that power, competent to delegate to another Judge the enquiry into the charges but should have made the enquiry himself. This contention proceeds on a misapprehension of the nature of the power.*
>
> *As pointed out in 'Barnard v. National Dock Labour Board', 1953-2 QB 18 at p. 40 (B), it is true that "no judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication". But the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof.*
>
> *It is well-recognized that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides - is the ultimated responsibility for the exercise of such power.*

As pointed out by the House of Lords in 'Board of Education v. Rice', 1911 AC 179 at p. 182 (C), a functionary who has to decide an administrative matter, of the nature involved in this case, can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party "has a fair opportunity to correct or contradict any relevant and prejudicial material". The following passage from the speech of Lord Chancellor in 'Local Government Board v. Arlidge', 1915 AC 120 at p. 133 (D) is apposite and instructive.

"My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department.

The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance

of his staff."

In view of the above clear statement of the law the objection to the validity of the dismissal on the ground that the delegation of the enquiry amounts to the delegation of the power itself is without any substance and must be rejected."

17.10 A bare reading of the above quoted paragraph makes it evident that exercise of power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. What is laid down by the Supreme Court is that it is well-recognized that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. According to the Supreme Court, that is the ordinary mode of exercise of any administrative power and what cannot be delegated except where the law specifically so provides is the ultimated responsibility for the exercise of such power.

17.11 Applying the principle laid down by the Supreme Court in the above quoted decision to the

facts of the instant case, it is evident that general control over the activities of the Deputy Collector is exercised by the Collector under the provisions of the Bombay Land Revenue Code whereas the Collector had retained power to approve or disapprove the reports and, therefore, notifications under Section 4 of the Act are not liable to be quashed on the ground that the reports submitted by the Deputy Collector were *void ab initio.* Having regard to the nature of inquiries to be made under Section 40 of the Act and Rule 4 of the Rules, this Court is of the opinion that it was not necessary for the Collector to personally examine all the details and he was competent to call for the details from the Deputy Collector.

17.12 In ***M/s.Larsen & Toubro Limited, etc. vs. State of Gujarat & Ors. (supra),*** as regards non-compliance of Rule 4 of the Rules, it was submitted that there was no independent report of the Collector. The said argument has been negatived by the Supreme Court in the following terms:

> *"As regards non-compliance of Rule 4, it was submitted that there was no independent report of the Collector. That is also not correct. It is not necessary for the Collector personally to examine all the details himself. He can certainly call for the report from the Assistant Collector as the circumstances of a case may demand, and act on the same."*

17.13 As noticed earlier, inquiry into the matters specified in Section 40 of the Act is necessary to enable the appropriate Government to give consent as contemplated by Section 39 of the Act. The facts of the instant case indicate that, on the basis of inquiry report submitted under Section 40 of the Act, the Government has given previous consent whereas the company has executed agreement. At the time of giving consent, the Government did not feel that the Collector had exceeded his jurisdiction by instructing the Deputy Collector to collect the data and make inquiries into the matters specified in Section 40 of the Act and Rule 4 of the Rules and, therefore, his report should not be acted upon while forming its satisfaction about the matters specified in Section 40 of the Act. This is how the matter has been viewed by the appropriate Government, which has to form satisfaction in terms of Section 40 of the

Act and this is relevant to be noticed for the purpose of deciding the issue raised by the petitioners. Further, in the inquiry, which was conducted by the Deputy Collector under Section 40 of the Act and Rule 4 of Rules, the petitioners had willingly and actively participated, but had not raised any objection that the Deputy Collector had no jurisdiction to conduct inquiry as delegation of the powers by the Collector to the Deputy Collector was illegal. Under the circumstances, this Court is of the opinion that now the petitioners are estopped from contending otherwise.

18. Even if the direction of the Collector to the Deputy Collector is considered as delegation of his functions, the same is not invalid in view of the provisions of Section 52-A of the Act, as applicable to the State of Gujarat. Section 52-A of the Act reads as under:

> *"52-A. Delegation- Notwithstanding anything contained in foregoing provisions of this Act,-*
>
> *(1) the State Government may, by notification in the Official Gazette, direct*

that all or any of the powers conferred or duties imposed on it or on the Commissioner by or under this Act, may, subject to such restrictions and conditions, if any, as may be specified in the notification, be excersiable also by the Collector;

(2) a Collector may, subject to the general or special orders of the Government delegate any of his powers or functions under this Act to any officer not below the rank of a Tahsildar or to a Land Acquisition Officer specially appointed by the Government in this behalf."

18.1 Section 1 of the Land Acquisition Act, 1894, is amended in its application to the State of Gujarat and after subsection (3), the following subsection is inserted as subsection (4) on and from the commencement of the Land Acquisition (Gujarat Unification & Amendment) Act, 1963. Sub-section 4 of Section 1 as applicable to the State of Gujarat is as under:

"*(4) This Act shall also extend to and be in force in the Saurashtra area of the State of Gujarat*".

18.2 As per Section 2 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963

(Gujarat Act No.20 of 1965), the Land Acquisition Act, 1894, as amended in its application to the Bombay area of the State of Gujarat by the enactments specified in the Schedule, is extended to and is in force in, the *Saurashtra* area of the State of Gujarat. The Schedule to the Act of 1963 makes reference to following enactments amending the Land Acquisition Act, 1894 in its application to the Bombay area to the State of Gujarat:

SCHEDULE

Enactments amending the Land Acquisition Act, 1894 in its application to the Bombay area of the State of Gujarat.

Year	**No.**	**Short title of the enactment.**	**Sections providing for amendment the Land Acquisition Act, 1894.**
1938	XVIII	The Land Acquisition (Bombay Amendment) Act, 1938	2
1945	XX	The Land Acquisition (Bombay Amendment) Act, 1945	2 to 4 (both inclusive)
1949	XXXV	The Bombay Land Acquisition Officers Proceedings Validation Act, 1949	6
1950	XXVII	The Land Acquisition (Bombay Amendment) Act, 1950	2
1953	XXXV	The Land Acquisition (Bombay Amendment) Act, 1953	2 to 11 (both inclusive)
1958	XII	The Land Acquisition (Bombay Amendment) Act, 1957	2

18.3 Therefore, there is no manner of doubt that Section 52-A of the Act is applicable in the instant case. Section 52-A(2) authorises the Collector to delegate any of his powers or functions under the Act to any officer not below the rank of a *Tahsildar.* The Deputy Collector to whom the inquiries under Section 40 of the Act and Rule 4 of the Rules were entrusted, is not an officer below the rank of a *Tahsildar.* Therefore, the delegation in favour of the Deputy Collector in terms of Section 52-A(2) of the Act was valid. During the course of arguments, Mr.M.C.Bhatt, learned Senior Counsel for the petitioners, has fairly conceded that in the inquiry to be made by the Collector under Rule 4 of the Rules can be delegated by the Collector to the Deputy Collector in view of provisions of Section 52-A of the Act, but his assertion is that powers and functions to be performed by an officer under Section 4 of the Act appointed under Section 40(2) of the Act, cannot be delegated because such an officer is not a Collector within Section 3(c) read with Section 52-A of the Act.

19. The contention that Section 52-A of the Act does not empower an officer appointed under Section 40(2) of the Act to delegate his powers / functions under Section 40 of the Act and, therefore, the delegation by the Collector in favour of the Deputy Collector to conduct inquiry under Section 40 of the Act should be regarded as unauthorised, has no substance. What is relevant to notice is that by one common order dated December 2, 2005, the State Government had appointed the Collector, Jamnagar to make inquiries under Section 40 of the Act and Rule 4 of the Rules and, thereafter, submit the report to the State Government. Merely because the Collector is an officer of the Government, it does not mean that he ceases to be Collector as defined in Section 3(c) of the Act moment he is appointed under Section 40(2) of the Act and assumes altogether a different status as an officer or is stripped of his powers as Collector under the Act. It is necessary to notice that the inquiry under Rule 4 of the Rules has to be made by the 'Collector' which term is defined in Section 3(c) of the Act, but inquiry under Section 40

has to be made by an "officer" appointed under Section 40(2) of the Act which means that any officer of the Government even below the rank of the Collector can be entrusted with inquiry under Section 40 of the Act. The word "officer" occurring in Section 40(2) of the Act will have to be construed in the light of the provisions of Section 3(c) of the Act, which defines the word "Collector". According to the said section, the expression "Collector" includes any officer specially appointed by the appropriate Government to perform the functions of a Collector under the Act. Therefore, when an officer, who is not Collector, is appointed under Section 40(2) of the Act, he assumes the status of Collector under the Act, but when a Collector is appointed under Section 40(2) of the Act to make inquiry under Section 40 of the Act, he does not assume another status and continues to enjoy the powers and status of the Collector under the Act. Therefore, it cannot be said that as far as Section 40 of the Act is concerned, the appointment of Collector, Jamnagar, was as an officer under Section 40(2) of the Act, but his appointment was as Collector for the purpose of

making inquiry under Rule 4 of the Rules. The Collector, Jamnagar, was specifically appointed for conducting inquiries under Section 40 of the Act as well as Rule 4 of the Rules and, therefore, it will have to be regarded that he was so appointed because he was Collector, Jamnagar within the meaning of Section 3(c) of the Act. Therefore, the Collector had every power and jurisdiction to delegate his powers and functions under Section 40 of the Act to the Deputy Collector.

20. The contention that Section 52-A has overriding effect over the provisions of Sections 1 to 52 of the Act, but does not apply to Section 40(2) of the Act, which contemplates appointment of such officer by the appropriate Government, has also no merits. The inquiry under Section 40 of the Act and Rule 4 of the Rules is essentially under the Land Acquisition Act. Section 55 prescribes, *inter alia,* of laying of the Rules before the Parliament/ Legislation as well as publication thereof in the official gazette. Once the Rules are framed and laid before the Parliament/Legislation and are published

in the official gazette, they have force of law and became part and parcel of the Act itself. Therefore, delegation of any of the powers and functions to be performed by the Collector under the Act in favour of the officer not below the rank of a *Tahsildar* would be perfectly just and legal. As observed earlier, by a letter dated December 2, 2005, the appropriate Government had directed the Collector to undertake inquiry under Section 40 of the Act and Rule 4 of the Rules. This amounts to appointment of the Collector for the purpose as contemplated by Section 40(2) of the Act and, therefore, in view of the provisions of Section 52-A of the Act, the Collector, Jamnagar, had power to delegate his powers/ functions to the Deputy Collector, Jamnagar. Under the circumstances, the inquiries conducted by the Deputy Collector and reports submitted by the Deputy Collector to the Collector, Jamnagar, cannot be regarded as null and void.

21. Even if Section 52-A of the Act is not held to be applicable to the powers and functions to be performed by the Collector, Jamnagar, under Section

40 of the Act in view of the fact that his appointment was as an officer as contemplated by Section 40(2) of the Act, there is no manner of doubt that such delegation is not impermissible since there is no express bar and there is no presumption against sub-delegation for exercising administrative powers more particularly when the scheme of Act clearly exhibits and indicates a legislative policy permitting such delegation whenever required. In this connection, it would be advantageous to refer to the decision of the Supreme Court in case of ***Barium Chemicals Limited & Anr. vs. Company Law Board & Ors., A.I.R. 1967 SC 295.*** Section 237(b) of the Companies Act, 1956 conferred discretion upon the Company Law Board to appoint an Inspector to investigate the affairs of the company. It, *inter alia,* also required the formation of an opinion as to whether there were circumstances suggesting the existence of one or more of the matters in subclauses (i) to (ii). By an order, power conferred under Section 237(b) of the Companies Act, 1956 was conferred on the Chairman of the Company Law Board. The Chairman of the Company Law Board had taken a

decision that an investigation be ordered against the company. That was challenged before the Supreme Court. While upholding exercise of powers by the Chairman of the Company Law Board, the Supreme Court has observed as under in paragraph 19 of the reported decision:

> *"19. Bearing in mind the fact that the power conferred by S. 237 (b) is merely administrative it is difficult to appreciate how the allocation of business of the Board relating to the exercise of such power can be anything other than a matter of procedure. Strictly speaking the Chairman to whom the business of the Board is allocated does not become a delegate of the Board at all. He acts in the name of the Board and is no more than its agent. But even if he is looked upon as a delegate of the Board and, therefore, a sub-delegate vis-a-vis the Central Government he would be as much subject to the control of the Central Government as the Board itself. For sub-s. (6) of S. l0E provides that the Board shall, in the exercise of the powers delegated to it, be subject to the control of the Central Government and the order distributing the business was made with the permission of the Central Government. Bearing in mind that the maxim delegatus non potest delegare sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by an express provision or by necessary implication. Where, as here, what is sub-delegated is an administrative power and control over its exercise is retained by the nominee of Parliament, that is, here the Central Government, the power to make a delegation may be inferred. We are, therefore, of the view that the order made*

by the Chairman on behalf of the Board is not invalid."

21.1 Applying the above quoted principles to the facts of the case, it will have to be held that the inquiries to be made under Section 40 of the Act are administrative in nature. Strictly speaking, the Deputy Collector to whom the inquiries under Section 40 of the Act and Rule 4 of the Rules were entrusted does not become a delegate of the Collector at all. He acts in the name of the Collector and is no more than his agent. Therefore, even if it is held that Section 52-A of the Act, as applicable to the State of Gujarat, does not permit the Collector, Jamnagar, to delegate his powers to the Deputy Collector under Section 40 of the Act, the exercise undertaken by the Deputy Collector is not vitiated because such delegation is not impermissible nor there is express bar and the scheme of the Act is such that it permits such kind of delegation whenever required.

22. Even if one were to come to the conclusion that the delegation, made by the Collector to the Deputy Collector authorising him to make inquiries in

the matters specified in Section 40 of the Act, is bad in law, the same would not have any vitiating effect either on the consent accorded by the State Government to the respondent No.1-Company or on the notifications issued under Section (4) of the Act, because the satisfaction of the appropriate Government was formed on the basis of results of the inquiries. Whether to give consent as contemplated by Section 39(2) of the Act subject to inquiries to be made under Section 40 of the Act, is a matter between the appropriate Government and the Company though the landowners are entitled to participate in the inquiry and have right to be heard. It is not the case of the petitioners that they were prevented from participating in the inquiries by the Deputy Collector or that opportunity of being heard was not afforded to them by the Deputy Collector. Therefore, one of the main ingredients of principles of natural justice was complied with by the Deputy Collector when he made inquiries. The petitioners have failed to establish before this Court that they suffered prejudice because inquiries under Section 40 of the Act were conducted by the Deputy Collector, Jamnagar,

and not by the Collector, Jamnagar. Further, the record shows that the petitioners have actively participated in the inquiries conducted under Section 5A of the Act.

22.1 In ***Pratapsang Naranji Jadeja vs. State of Gujarat & Ors., 1998 (1) G.L.H. 499,*** it was contended by the petitioners that no inquiry was conducted under Section 40 of the Act. Sufficient material was not placed before the Court to show that the petitioners were given notices regarding inquiry if any conducted by the authorities under Section 40 of the Act. However, it was found that the Deputy Collector had submitted report under Section 5A of the Land Acquisition Act and that notices were issued to the petitioners regarding the inquiries to be conducted by the Collector under Section 5A of the Act, but the petitioners had not effectively participated. After referring to the relevant decisions on the point, the Division Bench of this Court speaking through Hon'ble Mr.Justice K.G.Balakrishnan (as he then was) held as under:

"20. The Counsel for the petitioners further contended that no inquiry was conducted under section 40 of the Land Acquisition Act. This being an acquisition for the purpose of Company, the appropriate Government has to give consent to such an acquisition. Before granting such consent, the Government shall consider report submitted by the Collector and also the report of the inquiry conducted under section-40 of the Act. This inquiry under section 40 relates to the question regarding the purpose of acquisition. It shall be ascertained whether the acquisition is for the erection of dwelling houses for workmen employed by the Company or whether the acquisition is needed for the construction of some building or work of a Company, which could be said to be for public purpose. The Land Acquisition (Companies) Rules, 1963 say that before the Government gives consent, report of the Committee shall also be obtained. The Government on ascertaining public purpose and after giving consent, shall enter into an agreement with the Company. For these purposes,the Government shall constitute a Committee and the report of this Committee which is also a relevant piece of evidence, has to be considered by the Government while the consent is sought by the Company. In this case, report of such a Committee was placed before the Government. The Deputy Collector submitted a report under section 5A of the Land Acquisition Act. Under section 5A of the Act, Collector is bound to give notices to the interested parties and he shall consider the question whether land was needed for public purpose. In the present case, notices were issued to these petitioners regarding the inquiry to be conducted by the Collector and in that inquiry, the petitioners did not effectively participate. They were not present when the inquiry was conducted and on 10.4.1996, these petitioners were asked to

be present, but they did not respond to the notices and on 25.4.1996, section 5A report was submitted by the Collector. Thereafter on 10.6.1996, an agreement was executed on behalf of the Government. Sufficient material is not placed before us to show that the petitioners were given notices regarding inquiry, if any, conducted by the authorities under section 40 of the Act. But, in view of the inquiry made under rule-4 and section 5A of the Act, we do not think that there was necessity to conduct further inquiry by the Deputy Collector under section 40 of the Act.

21. In (1993)4 S.C.C. 255, SHYAM MANDAN PRASAD AND OTHERS vs. STATE OF BIHAR AND OTHERS it was held by the Supreme Court that the purpose of inquiry under section 40 is to find out whether land is required for public purpose. In the cases where section 5A inquiry is not held, inquiry under section 40 becomes important. For the purpose of acquisition, if urgency clause under section 17 is involved, there may not be an inquiry under section 5A and inquiry under section 40 may become necessary. But, in the instant case, section 5A inquiry was conducted and there was a report. The Supreme Court held in the above decision that the importance of such enquiry and report as contemplated under section 40 in the light of section 41,is to serve a double purpose as it may steer an acquisition if Section 5-A was dispensed with because of urgency under section 17 and secondly, to provide a safe alternative, should there be any fault in the conduct of enquiry under section 5-A of the Act. So, one or the other must be kept handy and if per chance one is defective, when both existing, the other can be deployed to satisfy the requirement of law.

22. In A.I.R. 1960 S.C. 1203 BABU BARKYA THAKUR v. STATE OF BOMBAY (NOW MAHARASHTRA) AND OTHERS, the Supreme Court has held that in the matter of acquisition of land for a Company, a question as to public purpose has to be investigated under section 5-A or section 40. As inquiry under section 5-A and inquiry under section 40 pertain to almost same matters, absence of any inquiry under section 40 need not be viewed seriously. Before the Government giving consent and executing an agreement with the Company, sufficient materials were placed before the Government in the form of report under section 5-A and also report of the Committee constituted for that purpose. Therefore, we do not think that there was any procedural irregularity. The petitioners have not been prejudiced by the absence of any inquiry under section 40 of the Act."

22.2 In view of the principles laid down by the Division Bench of this Court in above quoted decision, the contention that the reports submitted by the Deputy Collector were null and void and, therefore, the appropriate Government was not entitled to issue notifications under Section 4 of the Act, cannot be accepted because no prejudice is shown to have been suffered by the petitioners.

The net result of the above discussion is that the plea based on delegation of Collector's

powers and functions in favour of the Deputy Collector cannot be upheld and is hereby rejected.

23. The second contention, which is raised by Mr.M.C.Bhatt, learned Senior Counsel for the petitioners, is that the inquiries under Rule 4 of the Rules were vitiated on account of breach of principles of natural justice, as adequate opportunity of hearing was not granted when the adjournment sought for by the petitioners, to produce the record to indicate that *kharaba* land was sold to sister-concern of the respondent No.1 at a higher rate than the rates offered by the respondent No.1-Company during the course of negotiations, was refused and, therefore, the reports of the Deputy Collector are liable to be set aside.

23.1 *Per contra,* Mr.Mihir Joshi, learned Additional Advocate General, argued that sufficient opportunity of hearing was given by the Deputy Collector as well as sufficient time was available at the disposal of the petitioners to produce the relevant materials for consideration of the Deputy

Collector during the course of inquiry held under Section 40 of the Act and Rule 4 of the Rules and, therefore, it is not correct to say that the reports of the Deputy Collector are vitiated because sufficient opportunity of hearing was not granted to the petitioners.

23.2 On reconsideration of the facts emerging from the record of the case, this Court is of the opinion that the contention that petitioners were not afforded sufficient opportunity to adduce the evidence before the Deputy Collector to establish that the price offered by the respondent No.1 during negotiations was unreasonable and, therefore, the reports submitted by the Deputy Collector are bad in law, is misconceived. The record would indicate that the petitioners were informed about the inquires to be conducted under Section 40 of the Act and Rule 4 of the Rules by R.P.A.D. letters dated February 1, 2006 before initial inquiries were held on February 10, 2006 at Village: Navagam; on February 11, 2006 at Village: Kanalus and on February 15, 2006 at Village: Padana. The record further shows that negotiations

were thereafter held on March 9, 2006 whereas public hearings were held on April 11, 2006 at Village: Navagam, on April 12, 2006 at Village: Kanalus and on April 18, 2006 at Village: Padana. On the facts and in the circumstances of the instant case, this Court is of the opinion that period of more than two months was available to the petitioners to produce evidence before the Deputy Collector to indicate that the price of the lands offered by the respondent No.1 during the negotiations was not reasonable. The record and more particularly, the affidavit-in-reply filed by Mr.Bambhania, Deputy Collector, Jamnagar, makes it more than clear that negotiations had been going on between the land-owners and the Company much prior to the date fixed for inquiry and the petitioners were expected to produce the relevant material to support the price quoted by them, but no such material was produced. On the facts of the case, this Court finds that it was neither reasonable nor proper to adjourn the proceedings at the behest of few persons in view of nature of the proceedings and large number of persons involved. Therefore, refusal to grant adjournment to the petitioners to enable

them to produce document indicating that the price offered by the Company during the course of negotiations was unreasonable cannot be regarded as breach of principles of natural justice nor refusal to grant such adjournment vitiates acquisition proceedings.

23.3 In ***R.S.Saini v. State of Punjab & Others, A.I.R. 1999 SC 3579***, the President of Municipal Council was removed by the Disciplinary Authority. Two show cause notices enumerating the charges with necessary particulars were issued to the President. The President had filed his written reply and counsel of the President was also heard. The grievance made before the Supreme Court was that the President was not granted sufficient adjournments for further hearing and therefore, principles of natural justice were violated. The Supreme Court has rejected the said contention by observing that, "*The record also bears out that the appellant has been heard through his counsel and that complaint made that he was not given sufficient adjournments for further hearing in our opinion, would not constitute a breach of the*

principles of natural justice".

23.4 It is well-settled that the principles of natural justice cannot be put in a straight jacket formula and applied with rigidity without reference to the context in which they are sought to be applied. The principal contention of the petitioners is that had adequate time been granted and/or representations had been considered, further material regarding price of the lands for determining the compensation would have been available for consideration of the Deputy Collector and, therefore, the reports submitted by the Deputy Collector and the Collector deserve to be quashed. In this context, the Court finds that Rule 4 of the Rules contemplates determination of approximate amount of compensation likely to be payable in respect of the lands which, in the opinion of the Collector, should be acquired for the company and the only purpose is to ascertain whether the efforts for acquiring the land by agreement had been made by the company after offering reasonable price. In this case, the Deputy Collector as well as the Collector and the appropriate

Government have concluded that reasonable offer of price was made by the Company, but the negotiations failed when more price was demanded by the landowners. What is relevant to notice is that while coming to the conclusion that the Company had made efforts to acquire the lands by negotiations after offering reasonable price to the landowners, the Deputy Collector relied on *jantri* reports and sale prices of adjacent lands for the last five years for testing the reasonableness of the price offered by the Company during the negotiations. Looking to the nature of this particular facet of the inquiry, it is difficult for this Court to uphold the contention that there was any breach of principles of natural justice. As pointed out earlier, the petitioners have not suffered prejudice since it is open to them to adduce evidence for determination of appropriate compensation and such rights are neither foreclosed nor concluded by the tentative determination of price as indicated in the reports.

23.5 Moreover, even if it is assumed for the sake of argument that the Deputy Collector was not

justified in not granting the adjournment to the petitioners to enable them to produce the evidence regarding price of *kharaba* land sold by the Government to the sister-concern of the respondent No.1-Company to establish that the price offered by the respondent No.1-Company at negotiations was unreasonable, this Court finds that detailed objections were filed by the petitioners before the Competent Authority pursuant to the receipt of the notice under Section 4 of the Act raising all available contentions including the point that the Deputy Collector was not justified in not adjourning the matter to enable the petitioners to produce evidence regarding the price of *kharaba* land sold to the company by the State Government and that the price of *kharaba* land sold by the Government would indicate that the price offered by the respondent No.1-company to the petitioners during the negotiations was unreasonable. This contention has been dealt with by the competent authority while forwarding report under Section 5A(2) of the Act. Such a plea was raised in Special Civil Application No.521 of 2003 decided by the Division Bench of this

Court on August 23, 2005, which was filed by ***Jorubha Raghaji & Ors. against State of Gujarat & Anr***. and rejected in the following terms:

> *"21. Even if it is assumed for the sake of argument that no notice of hearing was served to the deceased father of the petitioners under Rule 4 of the Rules, this Court finds that the petitioners have filed detailed objections dated July 10, 2001 before the competent authority pursuant to receipt of the notice under Section 4 of the Act raising all available contentions and, therefore, neither the deceased nor the petitioners were prejudiced by non-receipt of notice of inquiry under Rule 4 of the Rules. In **Divisional Manager, Plantation Division, Andaman & Nicobar Islands (supra),** it was found by the Supreme Court that while holding domestic inquiry, principles of natural justice were not complied with. However, the plea based on the principles of natural justice has been negatived by the Supreme Court in following terms:*
>
> *"17. The principles of natural justice cannot be put in a straitjacket formula. It must be viewed with flexibility. In a given case, where a deviation takes place as regards compliance with the principles of natural justice, the court may insist upon proof of prejudice before setting aside the order impugned before it. (See Bar Council of India v. High Court of Kerala).*
>
> *19. In Karunakar this Court has clearly held that the employee must show sufferance of prejudice by non-obtaining a copy of the enquiry report."*
>
> *Again in **Pratapsang Naranji Jadeja (supra),***

the Division Bench of this Court has held in paragraph 22 of the reported decision as under:

"22. In A.I.R. 1960 SC 1203 Babu Barkya Thakur v. State of Bombay (Now Maharashtra) and Ors. the Supreme Court has held that in the matter of acquisition of land for a Company, a question as to public purpose has to be investigated under Section 5-A or Section 40. As inquiry under Section 5-A and inquiry under Section 40 pertain to almost same matters, absence of any inquiry under Section 40 need not be viewed seriously. Before the Government giving consent and executing an agreement with the Company, sufficient materials were placed before the Government in the form of report under Section 5-A and also report of the Committee constituted for that purpose. Therefore, we do not think that there was any procedural irregularity. The petitioners have not been prejudiced by the absence of any inquiry under Section 40 of the Act."

Further in ***Aligarh Muslim University & Ors., (supra),*** *what is held by the Supreme Court in paragraph 24 of the reported decision reads as under:*

"24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L.Tripathi v. State Bank of India Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade's Administrative Law (5th Edn., pp. 472-75), as follows: (SCC p.58, para 31).

[I]t is not possible to lay down rigid rules as to when the principles of natural justice

are to apply, nor as to their scope and extent. ... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala v. S.K. Sharma. In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P."

Even if principle laid by the Division Bench of this Court in case of ***Pratapsang Naranji Jadeja (supra)*** *is not taken into account in view of reference made to a larger Bench of the Supreme Court as reported in case of* ***Swasthya Raksha Samiti Rati Chowk (supra),*** *the proposition of law as it emerges from above quoted decisions of the Supreme Court is that the principle that in addition to breach of natural justice, prejudice must also be proved, has been developed and accepted in several cases. As explained by the Supreme Court, not mere violation of principles of natural but de facto prejudice other than non-issue of notice has to be proved. Applying the principles laid down by the the Supreme Court to the facts of instant case, this Court finds that the petitioners have failed to point out as to which prejudice was caused to them by non-service of notice of inquiry which was held under Rule 4 of the Rules. The petitioners could not show prejudice caused to them because*

all available points were raised in the objections dated July 10, 2001, which were filed with the help of the advocate pursuant to receipt of notice under Section 4 of the Act. "

23.6 As observed earlier, the Collector and the State Government were satisfied that during the negotiations, the respondent No.1 had offered reasonable price of the lands to be acquired. The scope of judicial review against such a decision is very limited. The Court cannot start examining the validity of the said decision as if it were exercising appellate powers. The Court is really concerned with the decision making process and not the decision itself, though the Court is entitled to look into the question whether the decision was based on relevant materials. On the facts and in the circumstances of the case, this Court finds that the satisfaction arrived at by the Deputy Collector, Collector and the State Government that the company had offered reasonable price during the course of private negotiations is based on relevant materials and the same is not liable to be interfered with by this Court while exercising powers under Article 226 of the Constitution.

24. Yet another plea based on breach of principles of natural justice that non-consideration of the representation dated May 12, 2006, which is at Page 180 of the compilation, as well as report dated May 26, 2006, which is produced at Page 182 of the compilation, by the Collector constituted a breach of principles of natural justice, is also devoid of merits. It may be mentioned that the letter dated May 12, 2006 is reiteration of the representation made by the petitioners before the Deputy Collector without any further evidence and, therefore, it was not incumbent upon the Collector to expressly deal with the same whereas letter dated May 26, 2006 was submitted after the report had been submitted by the Collector to the appropriate Government on May 15, 2006 and, therefore, it could not have been considered by the Collector at all. In any case, the contents of the said letter are again reiteration of the representation made to the Deputy Collector without any further evidence. The plea, which is based on breach of principles of natural justice, has, therefore, no substance and is hereby rejected.

25. The third contention that the instances of sale of Kharaba lands by the Government to the sister-concern of the respondent No.1 produced before the Collector in inquiry under Section 5-A of the Act as well as before this Court indicate that reasonable price of the lands to be acquired was not offered by the respondent No.1 during the course of the negotiations and, therefore, the reports submitted by the Deputy Collector under Rule 4 of the Rules could not have been acted upon for the purpose of making declarations under Section 6 of the Act, is devoid of merits.

25.1 What is relevant to notice is that as per the affidavit-in-reply filed by Mr.Laljibhai Balabhai Bambhaniya, who is Deputy Collector, Jamnagar, the petitioners did not adduce any material to support the price claimed by them during the course of inquiry under Rule 4 of the Rules. It is mentioned in the reply that negotiations had been going on between the lands owners and the company much prior to the date fixed for inquiry and the petitioners were

expected to produce the relevant materials to support the price claimed by them, but no such material was produced and as it was neither reasonable nor proper to adjourn the proceedings at the behest of few persons, in view of the nature of the proceedings and large number of persons involved, the petitioners are not justified in contending that the sufficient opportunity of hearing was not afforded to them. From the contents of the affidavit-in-sur-rejoinder filed by Mr.Paresh son of Shambhuprasad Davey, who is authorized signatory of the respondent No.1-Company, it transpires that the price of the lands referred to in the document, which is at Page 173 of the compilation, cannot be compared with the price of the lands offered by the respondent No.1-Company inasmuch as the lands referred to in the said document, which is at Page 173 of the compilation, is a piece of land near the State Highway No.25 allotted by the State Government for industrial use whereas the lands proposed to be acquired are made of one large compact area of agricultural undeveloped land situated away from the developed area. What is mentioned in the reply is that there is vital diminutive peculiarities

of the lands proposed to be acquired and the instance of the lands furnished by the petitioners is not relevant at all because the same land is of Village: Motikhavadi from which no land is sought to be acquired in the instant case. In view of these pleadings of the respondents, which are not effectively dealt with by the petitioners, this Court is of the opinion that the refusal of grant of adjournment to enable the petitioners to produce the evidence to indicate that reasonable price was not offered by the respondent No.1-Company during the course of negotiations was of little consequence and cannot be regarded as having vitiating effect on the reports submitted by the Deputy Collector under Rule 4 of the Rules. Moreover, the record shows that the evidence of instance of grant of lands to M/s.Reliance Industries Limited by the State Government was placed by the petitioners subsequently for consideration of the Deputy Collector during the course of inquiry, which was conducted under Section 5-A of the Act and the same was considered by the Deputy Collector while conducting inquiry under Section 5-A of the Act.

Under the circumstances, this Court is of the opinion that the refusal to grant of adjournment, on the facts and in the circumstances of the case, cannot be considered as breach of principles of natural justice nor would it render the reports submitted by the Deputy Collector under Rule 4 of the Rules bad in law and, therefore, the declarations made under Section 6 of the Act, cannot be quashed on this ground.

26. The fourth contention, which was raised, was that there was no genuine negotiation because the respondent No.1-Company had offered price of Rs.53,000=00 per *vigha* for *jarayat* land and Rs.63,000=00 per *vigha* for *bagayat* land, and asked the petitioners either to accept the said offer or forget about it and, therefore, the Deputy Collector was not justified in reporting that the company had made all reasonable efforts to get such lands by negotiations with the persons interested therein on payment of reasonable price and such efforts had failed. As far as this contention is concerned, the Deputy Collector in his report has specifically mentioned that the respondent No.1-Company had made

all reasonable efforts to get such lands by negotiations with the persons interested therein on payment of reasonable price and such efforts have failed. This finding is based on the report submitted by the respondent No.1-Company before the Deputy Collector, Jamnagar. In the affidavit-in-reply filed by Mr.Paresh, son of Shambhuprasad, who is authorised signatory of the respondent No.1-Company, on August 25, 2006, it is mentioned that a report was submitted by the respondent No.1 company indicating that the Company had made all reasonable efforts to get such lands by negotiations with the persons interested therein on payment of reasonable price and such efforts have failed. Paragraph 3 of the report dated May 15, 2006 forwarded by the Collector to the Government under Section 40 of the Act and Rule 4 of the Rules makes it every clear that the company had made all reasonable efforts to get such lands by negotiations with the persons interested therein on payment of reasonable price and such efforts had failed. Therefore, it is wrong to say that the Company had not made genuine negotiations with petitioners regarding the price of the lands to be

acquired. The record does not indicate that the approach of the respondent No.1-Company was that either the land owners should accept the price offered by it or forget about the same. It may be mentioned that the Deputy Collector as well as the Collector and the State Government were satisfied on the basis of materials available on the record that the company had made all reasonable efforts to get the lands by negotiations with the persons interested therein on payment of reasonable price and such efforts had failed. Such a finding of fact cannot be interfered with by the High Court in a petition under Article 226 of the Constitution because the High Court does not exercise appellate powers under Article 226 of the Constitution. What is relevant for the High Court is to ascertain whether the decision making process is vitiated for non-consideration of the relevant materials and the Court is hardly concerned with the merits of the decision. The record would indicate that the finding recorded by the authorities that the Company had made all reasonable efforts to get such lands by negotiations with the persons interested therein on payment of reasonable

price and such efforts had failed, is based on the materials on record. Under the circumstances, it is wrong to contend that no genuine negotiations were undertaken by the respondent No.1-Company for acquisition of the lands in question and no reasonable price of the lands to be acquired was offered to the petitioners.

26. The fifth point, which is not argued, but, raised in the written submissions that the Deputy Collector had ignored instances of sale of Kharaba lands mala fide, though he had access to the revenue record and therefore, the acquisition proceedings should be quashed, is devoid of merits. In the written submissions dated September 25, 2006 presented by the petitioners for consideration of the Court, the petitioners have mentioned as under:

> *"Being a Higher Revenue Officer of the area in his charge, he has access to the revenue record, but with a view to favour the respondent No.1, he has chosen to ignore the record available in his office. Thus, the entire inquiry under Rule 4 of is nothing but favouritism and mala fide."*

26.1 While dealing with this submission, this

Court finds that no sufficient data has been placed by the petitioners either on record of the petition or the two rejoinders filed by them, which would indicate that the Deputy Collector, Jamnagar, who had conducted inquiry under Rule 4 of the Rules was, inclined to ignore the revenue record with a view to favouring the respondent No.1-Company or that he had decided to refuse the adjournment sought for by the petitioners because he had grudge against the petitioners and, therefore, had acted *mala fide.* The record does not indicate that there was any personal dispute between the Deputy Collector, Jamnagar, who had conducted the inquiry under Rule 4 of the Rules, and any of the forty-five petitioners. In fact, the Deputy Collector, Jamnagar, was performing his duties on instructions of the Collector. But for the instructions of the Collector, he would not have issued notices to the petitioners calling upon them to remain present at the inquiries to be conducted under Rule 4 of the Rules and produce evidence before him. The plea of *mala fide* cannot be entertained in view of absence of factual data. Further, merely because the Deputy Collector, Jamnagar, is the Chief

Revenue Officer in charge of certain area of Jamnagar District, one need not jump to the conclusion that he was aware of the record lying in his office or in the office of other villages falling within his jurisdiction. Therefore, the petitioners are not justified in alleging that because the Deputy Collector had not taken into consideration the price of *kharaba* lands sold by the Government to M/s.Reliance Industries Limited on his own, he had acted *mala fide* or had adopted the said course at the instance of the respondent No.1-Company. Thus, this Court finds that the petitioners have failed to substantiate the plea of favouritism and *mala fide* mentioned in the written submissions and are not entitled to reliefs claimed in the petitions on the ground that the entire inquiry under Rule 4 of the Rules was nothing but favouritism and *mala fide.*

27. The sixth contention, which is raised by the learned counsel for the petitioners, is that the respondent No.1 company is at present not engaged in any industry nor it is the case of the respondent No.1 company that it is likely to be engaged in the

industry nor it is the case of the respondent No.1 that the lands are needed by it for any 'work' or 'industry' and, therefore, as the acquisition is not for public purpose within the meaning of Section 40(1)(aa) of the Act, the acquisition proceedings should be quashed. What is maintained by the learned counsel for the petitioners is that the respondent No.1-company which will create infrastructure for the purpose of ultimately carrying out business of real estate is not an industry as contemplated by Section 40(1)(aa) of the Act and that ultimately, as a developer, the respondent No.1 company will have to lease the lands to the processing units, which would enable the respondent No.1-company to earn profits and, therefore, the acquisition proceedings should be quashed. It was argued by the learned counsel for the petitioners that 50% of the land under the SEZ can be utilized for residential purpose, trading and business purpose, entertainment, recreational, hospital etc., but none of these purposes is public purpose as contemplated under Section 40(1)(aa) of the Act nor these purposes are covered under Section 3(f) of the Act and, therefore, the acquisition

proceedings should be annulled. It was asserted on behalf of the petitioners that there is absolutely no restriction in respect of utilization of 50% of the lands at all for the purposes other than allotment of lands for processing units whereas the developer has discretion to lease the land or can even sell the lands unregulated which would enable the respondent No.1-Company to indulge into unlimited profiteering and as profiteering object of the developer cannot be considered as public purpose within the meaning of Section 40(1)(aa) of the Act, the reliefs claimed in the petitions should be granted.

27.1 Mr.Mihir Joshi, learned Additional Advocate General for the acquiring authorities, submitted that the purpose of SEZs is setting up of extensive state of the art infrastructural facilities to encourage development of large units, essentially for the export production and therefore, the acquisition in the instant case is for public purpose. According to the learned Additional Advocate General, the infrastructural facilities are to be established in the instant case by the respondent No.1-Company as a

developer under the SEZ Act and therefore, the acquisition of the lands for the establishment of an SEZ is a public purpose. After referring to the statement of objects and reasons as well as relevant provisions of the Special Economic Zones Act, 2005, and the Statement of Objects and Reasons of the Gujarat Special Economic Zones Act, 2004, as well as policy of the State Government regarding Special Economic Zones as reflected in Resolution dated July 19, 2002, it was argued that the public purpose is manifest from the provisions of the Act and the policy, and therefore, it is wrong to contend that the requirements of Section 40(1)(aa) of the Act are not satisfied. What was asserted was that in this matter, public purpose is *ex-facie* apparent and if the public purpose is self-evident, no fault can be found with the conclusion mentioned in report submitted under Section 40 of the Act that the acquisition is for public purpose. It was emphasized that as the respondent No.1 would be setting up works of facilitating other industrial projects, the acquisition in the instant case should be regarded for public purpose. The learned Additional Advocate

General contended that grant of tax incentive does not derogate from the public purpose of establishing SEZ but is in fact an incentive to facilitate and encourage industrial as well as economic growth which is eminently in public interest and therefore, the contention raised by the learned counsel for the petitioners that the acquisition of land in the instant case is not for public purpose should not be accepted by the Court. The learned Additional Advocate General referred to the provisions of Section 26 of the SEZ Act, 2005 as well as Rules 17(1)(m) and 18(2)(iii) of the SEZ Rules, 2006, and policy of the State Government as reflected in Resolution dated July 19, 2006, to point out to the Court that there is no exemption from environmental laws to the units which are to be set up under the SEZ Act and therefore, the contention that grant of tax incentives or exemption to the units from environmental laws can never be considered for public purpose should not be accepted by the Court. What was asserted by the learned Additional Advocate General was that the contention that the respondent No.1-Company, after establishing the SEZ, would engage

itself in real estate business and earn large profits is misconceived, vague as well as without material particulars and therefore should not be accepted by the Court. It was argued that the respondent No.1-Company would be paying market price for the lands acquired and under the scheme of SEZ Act and the policy, the respondent No.1-Company is not entitled to sell the lands in the SEZ whereas its activities would be controlled by high ranking Government officials and committees to be constituted under the Act and therefore, it is not correct to say that the respondent No.1-Company is an estate dealer and would earn huge profits after establishment of SEZ. What was pointed out by the learned Additional Advocate General to the Court was that in case of breach of conditions imposed upon the developer, the approval granted is liable to be suspended and/or cancelled and therefore, it is wrong to say that the respondent No.1-Company, after establishment of SEZ, would engage itself in real estate business and earn large profits.

27.2 Mr.S.N.Shelat, learned Senior Advocate for

the respondent No.1-Company contended that establishment of an industrial estate is a public purpose though it may be through statutory authority and therefore, establishment of SEZ by a developer should also be regarded as for public purpose. What was pointed out to the Court by the learned counsel for the respondent No.1 was that the provisions of SEZ Act, 2005, are not challenged by the petitioners before this Court and as there is finality as regards public purpose when declaration under Section 6 of the Act is issued, the Court should not interfere with the acquisition proceedings unless the Court finds fault with the inquiries conducted either under Section 40 of the Act or Rule 4 of the Rules. What was asserted on behalf of the respondent No.1-Company was that the record shows that the provisions of Section 4 of the Act, Rule 4 of the Rules as well as Section 5A of the Act were strictly complied with by the authorities after which, declarations under Section 6 of the Act were made which are conclusive evidence that the lands are needed for a public purpose and therefore, the argument advanced on behalf of the petitioners that the acquisition of

lands in the instant case is not for public purpose has no merits. The learned counsel for the respondent No.1 brought to the notice of the Court, the definition of the word "works" as well as definition of the word "industry" from the Law Lexicon to emphasize that the acquisition is needed for the construction of work of the respondent No.1-Company which is taking steps for engaging itself in any industry or work which is for a public purpose and therefore the plea that the acquisition of land in the instant case is not for public purpose should not be accepted by the Court. In support of these submissions, reliance was placed by learned counsel for the respondent No.1-Company on the following decisions: (1) ***Pratibha Nema and Others v. State of M.P. and Others, AIR 2003 SC 3140 : (2003)10 SCC 626*** (2) ***P.Narayanappa & Anr. vs. State of Karnataka & Ors., JT 2006 8 SC 185*** (3) ***Shyam Nandan Prasad & Ors. vs. State of Bihar & Ors., (1993) 4 SCC 255*** and (4) ***Ramniklal N. Bhutta & Anr. vs. State of Maharashtra & Ors. (1997) 1 SCC 134***

27.3 In order to ascertain whether the

acquisition in the instant case is needed for the construction of some building or work of the respondent No.1 which is taking steps for engaging itself in any industry or work which is for public purpose as provided in Section 40(1)(aa) of the Act, it would be necessary to refer to the objects and reasons of the Special Economic Zones Act, 2005. It may be mentioned that the Government of India had announced a Special Economic Zone Scheme in April 2000 with a view to providing internationally competitive environment for exports. The objectives of Special Economic Zones included making available goods and services free of taxes and duties, supported by integrated infrastructure for export production etc. It was noticed that the policy relating to the Special Economic Zones was contained in the foreign trade policy and incentives and other facilities were offered to the Special Economic Zone developer and units through various notifications and circulars issued by the concerned Ministries / Departments. It was further noticed that the present system was not sufficient to lend enough confidence for investors to commit substantial funds for the

development of infrastructure and for setting up of the units in the Zones for export of goods and services. In order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, the Special Economic Zones Act, 2005, has been enacted by the Parliament. The salient features of the Act are as under:

(a) matters relating to establishment of Special Economic Zone and for setting up of units therein, including requirements, obligations and entitlements;

(b) matters relating to requirements for setting up of off-shore banking units and units in International Financial Service Center in Special Economic Zone, including fiscal regime governing the operation of such units;

(c) the fiscal regime for developers of Special Economic Zones and units set up therein;

(d) single window clearance mechanism at the Zone level;

(e) establishment of an Authority for each Special Economic Zone set up by the Central Government to impart greater administrative autonomy; and,

(f) designation of special courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in Special Economic Zones.

27.4 The Scheme of the Act is such that a developer can be (i) a `person', which term is defined in Section 2(v) of the SEZ Act, 2005, or (ii) a State Government, which has been granted by the Central Government, a letter of approval under sub-section 10 of Section 3 and includes an authority and a co-developer. The developer has to provide infrastructure facilities, i.e. industrial, commercial or social infrastructure or other facilities necessary for the development of Special Economic Zone or such other facilities which may be prescribed by Rules. The term `infrastructure', as defined in Rule 2(s) of the Special Economic Zones Rules, 2006, means, "facilities needed for

development, operation and maintenance of a Special Economic Zone and includes industrial, business and social amenities like development of land, roads, buildings sewerage and effluent treatment facilities, solid waste management facilities, port, including jetties, single point moorings, storage tanks and interconnecting pipelines for liquids and gases, Inland Container Deport or Container Freight Station, warehouses, airports, railways, transport system, generation and distribution of power, gas and other forms of energy, telecommunication, data transmission network, information technology network, hospitals, hotels, educational institutions, leisure, recreational and entertainment facilities, residential and business complex, water supply, including desalination plant, sanitation facility". As per the Scheme of SEZ Act, 2005, the developer has to provide all the facilities mentioned above and has to perform all municipal functions. What is important to notice is that after perusing the materials collected during the course of inquiry under Section 40 of the Act, the Deputy Collector, Jamnagar, found that (1) the project undertaken by the respondent

No.1 is important to the nation from the view point of international trade, (2) in the first phase itself, infrastructure facilities worth Rs.5000 crores would be provided over land admeasuring 6000 Acres (3) in the first phase itself, different industrial units are to invest Rs.35,000 to Rs.40,000 crores which includes investment of Rs.25,000 crores by Reliance Industries Limited, (4) because of the project, other units manufacturing petrochemical products would be benefited, (5) in the second phase, infrastructure facilities would be made available over the land admeasuring 4000 acres, (6) the infrastructure facilities to be made available include amenities like development of land, roads, buildings, railways, multi-media, transport production facilities, I.T. centre of international standards, (7) after obtaining foreign technology and assistance of experts modern complex is to be developed, (8) because of the project, direct/indirect employment for 2,50,000 unemployed persons of the country and the State would be available, (9) the employees associated with the project would be provided residential units with all

modern facilities, (10) off-shore financial centre is to be established to assist the foreign exporters, (11) as the project is to be established in backward area of Lalpur Taluka, District: Jamnagar, it would help the rural progress of the State, and (12) the project is wholly export oriented and would therefore enable the country to earn substantial foreign exchange which would contribute a lot to the financial growth of the country and the State. What is relevant to notice is that these findings which are based on appreciation of materials produced before the Deputy Collector are not subject to challenge in the instant petitions though reports submitted under Section 40 of the Act are challenged on other grounds. The only irresistible conclusion on the basis of above referred to conclusions is that the acquisition of lands in the instant case is for public purpose. Further, as is evident from the policy of the State Government which is reflected in the Resolution dated July 19, 2002, the concept of SEZ is expected to bring large dividends to the State in terms of economy and industrial development and generation of new employment opportunities. What is

mentioned in the said policy is that Special Economic Zones are expected to be the engines for economic growth. If this is so, there is no manner of doubt that the acquisition in the instant case is needed for the construction of some building or work of the respondent No.1 which is taking steps for engaging itself in any industry or work which is for a public purpose within the meaning of Section 40(1)(aa) of the Act.

27.5 The word "works" is defined in the Law Lexicon as under:

> *"Works", defined. N.B.- This word also occurs in combination with other words (as) Drainage work; Irrigation - work; Private salt-work; Salt-work; Special salt-work; Water-works. Act.9, 1910. S.2(n)*
>
> *Structure of apparatus of some kind; engineering or architectural structures of building [S.2(n), Indian Electricity Act and S.430, I.P.C.]*
>
> *Works means some sort of construction of a permanent nature and it must be in existence on the date on which the ceiling is going to be fixed. Mohammad Fakhruddin v. The State of Bihar, AIR 1976 Pat.382, 384. [Bihar Land Reforms Act (1961) (20 of 1962), Sec.4(c) and (d)]*
>
> *The general word `works' in S.35(5) is*

limited to something material in the sense of buildings, structures and such like improvements. Merely fencing a vacant plot of land does not come with the expression `works'. Indira B.Gokhale v. Union of India, AIR 1990 Bom.98, 103 [Defence of India Act (51 of 1962), S.36(5)].

The plural `works' is used in the sense of operations, projects, scheme, plan such as building works, irrigation works etc. and the licence to vend liquor in retail is not a contract for execution of works undertaken by Government. Ram Raj Tewavi v. Gijaiya Laxmi, AIR 1986 All. 325, 328. [Representation of the People Act (43 of 1951), S.9A]"

Whereas the word "industry" is defined in the Law Lexicon as under:

"*Industry. `Industry' is defined by lexicographers to be habitual diligence in any employment, either bodily or mental, and is as applicable to the sale of goods, which is the chief business of a merchant as to the transportation of goods, which is the chief business of an express carrier.*

The word `industry' means only the place where the process of manufacture or production of goods is carried on and it cannot in any event include `hospitals, dispensaries or nursing homes...."

27.6 In view of the above definitions, this Court is of the firm opinion that the respondent No.1-Company is engaged in providing infrastructural

facilities for which in-principle approval has been granted by the Government of India under the provisions of SEZ Act, 2005, and therefore, acquisition of land in the instant case is needed for the construction of work of the respondent No.1-Company which is taking steps for engaging itself in any industry or work which is for a public purpose within the meaning of Section 40(1)(aa) of the Act.

27.7 In ***Pratibha Nema and Others v. State of M.P. and Others (supra),*** what is ruled by the Supreme Court is that a public purpose is involved in the acquisition of land for setting up an industry in private sector as it would ultimately benefit the people. What is highlighted in the said decision is that the satisfaction of Government as to existence of public purpose cannot be lightly faulted. After explaining that the acquisition for Companies under Part-VII is not divorced from the element of public purpose, what is laid down is that the concept of public purpose runs through the gamut of Part-VII as well and that the provisions of Sections 40 and 41 make it clear that even in a case of acquisition for

a Company, public purpose is not eschewed. In the said case, the lands were acquired for setting up diamond park. A plea was raised before the Supreme Court that in fact, acquisition was for private company and that the amount paid by the Government Nigam in anticipation of interim award was in fact money of private Company and was not a public money. The record indicated that the private Company had paid advance lease premium to the Nigam. The contention that the land in the said case was not acquired for public purpose was negatived by the Supreme Court in the following terms:

> "19. These decisions establish that a public purpose is involved in the acquisition of land for setting up an industry in private sector as it would ultimately benefit the people. However, we would like to add that any and every industry need not necessarily promote public purpose and there could be exceptions which negate the public purpose. But, it must be borne in mind that the satisfaction of the Government as to the existence of public purpose cannot be lightly faulted and it must remain uppermost in the mind of the Court.
>
> 20. Having noted the salient provisions and the settled principles governing the acquisition for a public purpose, it is time to turn to Part VII dealing with acquisition of land for Companies. The important point which we would like to highlight at the

outset is that the acquisition under Part VII is not divorced from the element of public purpose. The concept of public purpose runs through the gamut of Part VII as well.

21. 'Company' is defined to mean by Section 3(e) as (i) a Company within the meaning of Section 3 of the Companies Act other than Government Company, (ii) a Society registered under the Societies Registration Act other than a Co-operative Society referred to in clause (cc) and (iii) a Co-operative Society governed by the law relating to the Co-operative Societies in force in any State other than a Co-operative Society referred to in clause (cc). An industrial concern employing not less than 100 workmen and conforming to the other requirements specified in Section 38-A is also deemed to be a Company for the purposes of Part VII. In order to acquire land for a Company as defined above, the previous consent of the appropriate Government is the first requirement and secondly the execution of agreement by the Company conforming to the requirements of Section 41 is another essential formality. Section 40 enjoins that consent should not be given by the appropriate Government unless it is satisfied that (1) the purpose of the acquisition is to obtain land for erection of dwelling houses for workmen or for the provision of amenities connected therewith; (2) that the acquisition is needed for construction of some building or work for a Company which is engaged or about to engage itself in any industry or work which is for a public purpose; and (3) that the proposed acquisition is for the construction of some work that is likely to be useful to the public. The agreement contemplated by Section 41 is meant to ensure the compliance with these essentialities. It is also meant to ensure that the entire cost of

acquisition is borne by and paid to the Government by the Company concerned. Thus, it is seen that even in a case of acquisition for a Company, public purpose is not eschewed. It follows, therefore, that the existence or non-existence of a public purpose is not a primary distinguishing factor between the acquisition under Part II and acquisition under Part VII. The real point of distinction seems to be the source of funds to cover the cost of acquisition. In other words, the second proviso to Section 6(1) is the main dividing ground for the two types of acquisition. This point has been stressed by this Court in Srinivasa Co-operative House Building Society Limited v. Madam G. Sastry ((1994) 4 SCC page 675) at paragraph 12 : 1994 AIR SCW 3261:

".....In the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition is for a public purpose and that the cost of acquisition should be borne, wholly or in part, out of public funds...."

The legal position has been neatly and succinctly stated by Wanchoo, J. speaking for the Constitution Bench in R. L. Arora v. State of Uttar Pradesh (AIR 1962 SC page 764). This is what has been said :Para 5

"Therefore, though the words 'public purpose' in Sections 4 and 6 have the same meaning, they have to be read in the restricted sense in accordance with Section 40 when the acquisition is for a company under Section 6. In one case, the notification under Section 6 will say that

the acquisition is for a public purpose, in the other case the notification will say that it is for a company. The proviso to Section 6(1) shows that where the acquisition is for a public purpose, the compensation has to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. Where, however, the acquisition is for a company, the compensation would be paid wholly by the company. Though, therefore, this distinction is there where the acquisition is either for a public purpose or for a company, there is not a complete dichotomy between acquisitions for the two purposes and it cannot be maintained that where the acquisition is primarily for a company it must always be preceded by action under Part VII and compensation must always be paid wholly by the company. A third class of cases is possible where the acquisition may be primarily for a company but is may also be at the same time for a public purpose and the whole or part of compensation may be paid out of public revenues or some fund controlled or managed by a local authority. In such a case though the acquisition may look as if it is primarily for a company it will be covered by that part of Section 6 which lays down that acquisition may be made for a public purpose if the whole part of the compensation is to be paid out of the public revenues or some fund controlled or managed by a local authority. Such was the case in Pandit Jhandu Lal v. State of Punjab (AIR 1961 SC 343).....
.....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 apply."

22. Thus the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The

> main and perhaps the decisive distinction lies in the fact whether cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in private sector could get imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present State of law, that seems to be the real position."

27.8 Again, in ***P.Narayanappa & Anr. v. State of Karnataka and Ors. (supra),*** the lands were acquired for industrial area development. Part of the acquired land was leased to a Company for establishing Software Technology Park. The acquisition was challenged on the ground that it was not for public purpose. While considering this question, the Supreme Court has held as under in paragraphs 10 and 11 of the reported decision:

> "10. The Preamble of the Act shows that it has been enacted to make special provisions for securing the establishment of industrial areas and generally to promote the

establishment and the orderly development of the industries in such industrial areas. Section 2(7a) defines industrial infrastructural facilities. This provision was inserted on 19.2.1997 by an amendment made by Act No.11 of 1997. The Statement of Objects and Reasons of the Amending Act has some relevance and the same is being reproduced below:

> "After the liberalization of economic and industrial policies in the year 1991 increased emphasis has been given for Private Sector Investment not only in the Industrial Sector but also in the Infrastructural Sectors. As such a number of proposals, both from indigenous and foreign companies have been received for considerable investments in infrastructural areas like establishment of power projects, express highways, ports, airports, townships, industrial parks, etc. These projects need considerable extent of land for implementation. Therefore, it is considered necessary to amend the Karnataka Industrial Areas Development Act, 1966, to enable the Board to acquire land for providing Industrial Infrastructural Facilities".

11. As the definition shows, anything which contributes to the development of industries in industrial areas like technology parks, townships for the purpose of establishing trade and tourism centres and any other facility as the State Government may notify, will be an industrial infrastructural facility. It, therefore, shows that the object of the Act is not only to secure establishment of industrial areas and orderly development of industries therein, but also to create facilities which contribute to the development of industries

> which may include technology parks, townships, trade and tourism centres, etc."

27.9 Further, while considering the distinction made between a public purpose and purpose for the Company, the Supreme Court has made following pertinent observations in paragraph-21 of the decision in ***Shyam Nandan Prasad and Others v. State of Bihar and others (supra):***

> "21. Now here the distinction is made between a public purpose and a purpose for the company. The acquisition of land for a company is in substance for a public purpose as all those activities mentioned in Section 40 such as constructing dwelling houses and providing amenities for the benefits of workmen employed by it and construction of some work for public utility etc. serve the public purpose. The acquisition for the company and the purpose for it, can well be investigated under Section 5-A or Section 40, necessarily after the notification under Section 4. Reference may usefully be made to Babu Barkya Thakur v. State of Bombay (now Maharashtra) (AIR 1960 SC 1203 : (1961)1 SCR 128). It was the conceded case before the High Court that there could be no acquisition for the respondent-Society without provisions of Section 40 of the Act being involved and complied with. In Babu Barkya case too, this Court has taken the view that as provided in Section 39, the machinery of the Land Acquisition Act beginning with Section 6 and ending with Section 37 shall not be put into operation unless two conditions precedent are fulfilled, namely, (i) the previous consent

> of the appropriate Government has been obtained and (ii) an agreement in terms of Section 41 has been executed by the Company. Such consent could be given if it was satisfied on the report of the enquiry envisaged by Section 5-A(2) or enquiry held under Section 40 itself that the purpose of the acquisition is for purposes as envisaged in Section 40. In this state of law, the plea set up on behalf of the appellants that when their Society could not be treated either as a private or a Government company, it was no company at all so as to remain bound to comply with Chapter VII of the Act, is of no substance. The Society as a company is bound to satisfy the requirements of Section 40 before taking aid of Sections 6 to 37 of the Act to promote its needed acquisition."

27.10 In ***Ramniklal N. Bhutta and another v. State of Maharashtra and others (supra)***, by Notification dated November 29, 1989, issued under Section 4 of the Land Acquisition Act, 1894, two pieces of land were notified for acquisition for public purpose, to wit "for Bombay Electric Supply and Transport Undertaking for Bus Stand". The two pieces of land notified were CTS No.218 and CTS No.211. The appellant claimed to be the owner of CTS No.211. The declaration under Section 6 was made on December 16, 1982. It was found that CTS No.218 belonged to a Church. The BEST entered into a settlement with the

said two persons whereunder, an extent of 906 mts. of land was given on perpetual lease to BEST free of any charge, i.e. Re.1/- per annum, whereas the remaining portion was to be utilized by the said persons for their own purposes including construction of multi-storied complex for the employees of Bombay Municipal Corporation. Under the said settlement, two persons also agreed to construct a bus stand in the portion leased out to BEST at their own cost and had offered to the BEST free of cost. This settlement was brought to the notice of the Land Acquisition Officer. The Land Acquisition Officer passed his award. When the appellant came to know of the aforesaid facts, he filed a writ petition challenging acquisition of CTS No.211 on various grounds. The writ petition was summarily dismissed by the learned Single Judge, against which a writ appeal was filed. The appeal was allowed and the writ petition was restored to file which was again dismissed with costs. Thereupon, the appellant approached the Supreme Court. One of the contentions which was raised for consideration of the Supreme Court was that the very fact that part of the land notified for acquisition for alleged public

purpose was surrendered to others including for the purpose of construction of residential complex for the employees of Bombay Municipal Corporation showed that the alleged purpose mentioned in the Notification under Section 4 was not real and was only a ruse to hold the housing society. The said plea has been negatived by the Supreme Court in paragraph-10 of the reported decision, which reads thus:

> "10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recongnised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in Courts. These challenges are generally in the shape of writ petitions

filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their power of granting stay/ injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a Civil Suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceeding is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the Courts while dealing with challenges to acquisition proceedings."

27.11 Applying the principles laid down by the

Supreme Court in the above-quoted decisions, this Court is of the opinion that the acquisition of lands in the instant case is needed for the construction of building or work of the respondent No.1-Company to enable it to provide infrastructure within the meaning of SEZ Act, 2005 and SEZ Rules, 2006, which is for a public purpose, within the meaning of Section 40(1)(aa) of the Act, and therefore, the acquisition is not liable to be quashed on the ground that the purpose for which the acquisition proceedings were initiated was not for a public purpose.

28. The seventh contention that the respondent No.1-Company, after providing infrastructure, will be engaging itself in the real estate business for profiteering is misconceived, vague and without material particulars. There is no manner of doubt that the respondent No.1-Company would be paying market price for the lands. The Scheme of SEZ Act and the policy of the State Government indicate that the respondent No.1-Company would not be permitted to sell the lands in the SEZ. Further, high ranking

Government officials and committees are incharge and control of the Zone as a whole. The respondent No.1, as a developer will have to undertake the activities subject to control of statutory authorities which includes withdrawal of letter of approval in case of default.

28.1 In ***Bharat Singh and others v. State of Haryana, (1988) 4 SCC 534***, the appellants challenged the validity of acquisition of their lands by the State of Haryana under the Act for a public purpose, namely for the development and utilization of land for industrial purpose at Gurgaon under the Haryana Urban Development Authority Act, 1977 by the Haryana Urban Development Authority. One of the points urged before the Supreme Court was that the impugned acquisition was nothing but a profiteering venture and therefore should be quashed. The said plea has been rejected by the Supreme Court in pargraphs 11 and 12 of the reported decision, in the following terms:

> "11. In the writ petitions, the point was taken as an abstract point of law. There was no attempt on the part of the appellants to

substantiate the point by pleading relevant facts and producing relevant evidence. It is apparent that there was no material in the writ petitions in support of the contention of the appellants that the impugned acquisition was nothing but a profiteering venture. The contention was not also advanced before the High Court at the hearing of the writ petitions. The facts stated in the said application of the HSIDC do not, in our opinion, support the contention of the appellants. It is true that, as stated in the said application, HSIDC paid a sum of Rs. 1.74 crores to HUDA, but nothing turns out on that. The land was acquired by the Government for the purpose of development and industrialisation. The Government can do it itself or through other agencies. In the instant case, the land was acquired at the instance of HUDA and thereafter, HUDA had transferred the same to HSIDC. It is not that the land was transferred in the same condition as it was acquired. But, we are told by the learned Counsel appearing on behalf of HUDA and HSIDC that before transferring, HUDA had made external developments incurring considerable cost and HSIDC in its turn has made various internal developments and in this way the land has been fully developed and made fit for industrialisation. Our attention has been drawn by the learned Counsel for HUDA and HSIDC to the various external developments made by HUDA at a total cost of Rs. 1,66,200/- per acre before it was transferred to HSIDC and the cost that was incurred for external developments was included in the price. Thus, there was no motive for HUDA to make any profit.

12. The "public purpose" in question, already noticed, is development and industrialisation of the acquired land. The appellants have not challenged the said "public purpose". In the absence of any such

> challenge, it does not lie in the mouth of the appellants to contend that the acquisition was merely a profiteering venture by the State Government through HUDA. The appellants will be awarded the market value of the land as compensation by the Collector. If they are dissatisfied with the award they may ask for references to the District Judge under Section 18 of the Act. If they are still aggrieved, they can file appeals to the High Court and, ultimately, may also come to this Court regarding the amount of compensation. The appellants cannot claim compensation beyond the market value of the land. In such circumstances, we fail to understand how does the question of profiteering come in. Even assuming that HUDA has made some profit, that will not in any way affect the public purpose for which the land was acquired and the acquisition will not be liable for any challenge on that ground."

28.2 The submission that once SEZ project is approved by the Government, the respondent No.1-Company will act as a private estate broker cannot be accepted in view of the provisions of Section 10 of the SEZ Act, 2005, which *inter alia provide* for suspension of letter of approval as well as overall control exercised by the Development Commissioner under this Act and constitution of the authority under Section 31 of the said Act. Thus, the seventh plea that the acquisition of land in the instant case for the respondent No.1-Company is not for public

purpose or that it would enable the respondent No.1-Company to profiteer cannot be accepted and is hereby rejected.

29. The eighth contention, which has been raised by Mr.M.C.Bhatt, learned counsel for the petitioners, for consideration of the Court, is that the respondent No.1-Company approached the Government of Gujarat for acquisition of the lands as it had obtained the letter of approval for SEZ under Section 3(10) of the SEZ Act, 2005 and as the area of SEZ was fixed before the commencement of the land acquisition proceedings, the establishment of SEZ under the SEZ Act itself, could not have been accepted as public purpose. It was argued that the Deputy Collector and the Government of Gujarat have proceeded on the basis that the establishments of SEZ is a public purpose and, therefore, inquiry under Section 40(1)(aa) of the Act and ultimate issuance of declarations under Section 6 of the Act should be treated as empty formality and an eye-wash. What was maintained by the learned counsel for the petitioners was that no discretion was left with the Deputy Collector to

make report to the State Government that the lands were not needed for public purpose as contemplated under Section 40(1)(aa) of the Act and the rights of the petitioners to make representation that the lands were not needed for public purpose was also rendered nugatory and redundant as a result of which, the declarations made under Section 6 of the Act should be set aside by the Court. It was maintained that a decision behind back of the petitioners was taken by the Deputy Collector and the State Government that the establishment of SEZ pursuant to in principle approval granted by the Central Government is a public purpose and as purported opportunity given to the petitioners by the Deputy Collector to represent their case under Section 40(1)(aa) was merely an empty formality, the reliefs claimed in the petitions should be granted. The learned counsel emphasized that the Deputy Collector had not applied his mind regarding need of the lands for public purpose under Section 40(1)(aa) of the Act, but had proceeded on the basis that the establishment of SEZ approved by the Central Government was a public purpose and, therefore, the reports submitted by the Deputy

Collector deserve to be set aside.

29.1 Mr.Mihir Joshi, learned Additional Advocate General, contended that the Scheme of the Act is such that inquiry under Section 40 of the Act as well as inquiry under rule 4 of the Rules precede declarations made under Section 6 of the Act on requisite satisfaction being reached that the acquisition is needed by a company for industry/work, which is for a public purpose and, therefore, it is wrong to contend that the inquiry made under Rule 4 of the Rules was merely an empty formality or an eye-wash. After emphasizing that the inquiry under Section 40 of the Act is undertaken to ascertain whether the purpose for which the land is acquired is a public purpose, it was argued that an SEZ has certain specific requirements as postulated in the relevant Acts and the Rules, which are certainly relevant and have to be taken into account in the inquiry, but these requirements of law cannot be termed as pre-determination of issues mentioned in Section 40(1)(aa) of the Act. What was maintained before the Court was that even in the absence of

letter dated October 21, 2005, the nature of the inquiry under Section 40 of the Act and would be the same and, therefore, the said letter cannot be construed as truncating an inquiry to be made under Section 4 of the Act. It was argued that the letter dated October 21, 2005 of the Government of India is a letter approving in principle the proposal of the Company for setting up SEZ, but the said letter does not involve any final determination by the Central Government on any aspect of the matters to be gone into by the Deputy Collector under Section 40(1)(aa) of the Act, but is, in fact, communication to be addressed by the Government within thirty days from the date of receipt of an application from the developer, which is quite evident from the Scheme envisaged by Rule 6 of the SEZ Rules, 2006 whereas the final notification would be issued under Rule 8 after due compliance by the Developer, which indicates that the letter dated October 21, 2005 is not determinative of any of the aspects covered under Section 40 of the Act. It was asserted by the learned Additional Advocate General that, in fact, no matter required to be ascertained under Section 40 of

the Act or Rule 4 of the Rules is covered by letter dated October 21, 2005 and as the matters were decided independently in the inquiry, the reports submitted by the Deputy Collector cannot be termed as pre-determining the matters specified in Section 40 of the Act.

29.2 Mr.K.S.Nanavati, learned Senior Advocate for the respondent No.1-Company, argued that the submission made on behalf of the petitioners, that the inquiry under Section 40 of the Act and Rule 4 of the Rules had become empty formality as the Central Government, in principle, had granted approval for the project on October 21, 2005, is erroneous and does not flow from the provisions of the SEZ Act. What was pointed out to the Court by the learned counsel for the respondent No.1 was that scheme of the SEZ Act negates the above submission because Section 3 provides for making proposal to establish Special Economic Zone and the person who intends to set up SEZ has to identify area and is required to submit information as required and indicated in the form prescribed whereas under subsection (10) of

Section 3 of the SEZ Act, 2005, the Central Government grants letter of approval to the developer, but there is no stamp of the authority that the notification for SEZ shall be issued for the area for which, the approval in principle is granted and as that stage is provided under Rule 7 of the SEZ Rules, which intervenes in between the letter of approval and the notification to be issued under Section 4 of the Act, the submission made by the learned counsel for the petitioners that inquiry under Section 40 of the Act was an eye wash, should not be accepted by the Court. It was argued that the proposal that may be made by the developer will have to be scrutinized by the Central Government under Rule 7 of the Rules after the developer provides the information namely; (1) identification of the area with proof of legal right and possession; (2) certificate from the State Government that the area is free from all encumbrances; (3) that identified areas are contiguous and vacant and that there is no public thorough fare and satisfaction as regards the third *proviso* to clause (a) of sub-rule 2 of Rule 5 and, therefore, the submission that everything was

pre-determined before the Deputy Collector had undertaken inquiry under Section 4 of the Act is misconceived. What was asserted on behalf of the respondent No.1-Company was that in the inquiry which was held under Section 40 of the Act, it was open to the landowners to raise objections for the matters specified in Section 40 and Rule 4 and, in fact, they had raised such objections during the course of the said inquiry, which were considered by the competent authority independently and objectively *de hors* the provisions of the SEZ Act and, therefore, the plea that the inquiry under Section 40 of the Act and Rule 4 of the Rules conducted by the Deputy Collector was an eyewash and merely a formality should not be favourably considered by the Court.

29.3 Having considered the rival submissions advanced at the Bar, this Court is of the opinion that it is difficult to conclude that the inquiry under Section 40 of the Act and Rule 4 of the Rules had become an empty formality or an eye-wash, as the Central Government had granted in-principle approval for the project by a letter dated October 21, 2005.

While dealing with this contention raised by the learned counsel for the petitioners, it would be relevant to notice the Scheme of the SEZ Act, 2005. Section 3 of the said Act provides for making proposal to establish SEZ. The person who intends to set up SEZ has to identify the area and is required to submit information as indicated in the form prescribed. Under Section 3(10) of the Act, the Central Government grants letter of approval to the developer. The letter of approval is in respect of the land area proposed by the developer. The scheme of the Act does not indicate that there is stamp of the authority that notification for SEZ shall be issued for the area for which in-principle approval is granted. That stage is provided under Rule 7 of the SEZ Rules. The provision of Rule 7 intervenes in between the letter of approval and the notification to be issued under Section 4 of the Act. The proposal which may be made by the developer will have to be scrutinized by the Central Government as contemplated by Rule 7 of the SEZ Rules after necessary information is provided by the developer. The developer has to provide the following information so

as to enable the Central Government to scrutinize the proposal, which may be made under Rule 7 of the SEZ Rules:

(1) identification of the area with proof of legal right and possession;
(2) certificate from the State Government that the area is free from all encumbrances;
(3) that identified areas contiguous and vacant and that there is no public thorough fare and satisfaction as regard the third proviso to clause (a) of sub-rule 2 of Rule 5.

29.4 It is only after the proposal is scrutinized by the Central Government, that Central Government can issue notification under Rule 8 of the SEZ Rules. It may be mentioned that the conditions set out in Rule 7 of the SEZ Rules are not satisfied as on today nor notification under Rule 8 is issued. There is no manner of doubt that the matter is at an inchoate stage and, therefore, neither the inquiry under Section 40 of the Act nor the inquiry under Rule 4 of the Rules can be branded as an empty formality. It

may be mentioned that in principle approval has been granted by the Central Government, which is not final. In the type of acquisition with which this Court is concerned, numbers of reports have to be considered. For the purpose of those reports also, several things are required to be undertaken and, therefore, there is bound to be some tentative determination by some authority, but that determination cannot be termed as truncating powers of the authority, making the inquiry under Section 40 of the Act. The Deputy Collector while making the inquiry under Section 40 of the Act and Rule 4 of the Rules is not under an obligation of the Central Government because independent powers have been conferred on him by the Act and the Rules, which are not fettered at all by the provisions of the SEZ Act of 2005. The reports, which are subject matter of challenge in the instant case, do not indicate that while making the inquiry under Section 40 of the Act or Rule 4 of the Rules, the Deputy Collector had solely taken into consideration the decision of the Central Government as reflected in the letter granting in principle approval while coming to the

conclusion that the acquisition was for public purpose. At this stage, it would be advantageous to refer to one judgment of this Court on the point. In ***Mandoobhai Dadoobhai vs. State of Gujarat & ORS., 1995 (1) G.L.H. 907,*** the validity of acquisition proceedings initiated for the public purpose of North Gujarat University Campus was challenged. One of the contentions raised before the Court was that the inquiry under Rule 4 of the Rules was not conducted in just, fair and reasonable manner because even before issuance of notification under Section 4 of the Act, the decision to acquire the lands was taken and, therefore, the inquiry which was pre-determined was bad in law. The said contention was considered by the Court and negatived in following terms:

> *"13. It is submitted that even before issuance of Section 4 notification dated August 22, 1987 decision to acquire these lands was taken. Therefore the enquiry was pre-determined one and hence it cannot be said to be just and fair. This contention is raised on the basis of a letter dated 15th July 1986 written by the then Minister for Education, Youth Services and Cultural Activities, Government of Gujarat, to one Shri Viraji Navaji Thakore, M.L.A., and letter dated 7th September 1987, written by the Additional Chief Secretary, Education Department, Government of Gujarat, to one*

Shir Shankarji Kalaji Thakore, M.L.A. (produced at pages 118 and 119 of Special Civil Application No.12630/93). Letter dated 15th July 1986 written by the then Minister for Education, Youth Services and Cultural Activities was in response to letter dated June 17, 1986. Therein it is stated that after full consideration the land for University at Patan was selected near Patan College. In the letter dated September 7, 1987 written by the Additional Chief Secretary also it is indicated that the Government as, after discussion, taken matured decision with regard to selection of the site for North Gujarat University. On the basis of these letters it is submitted that the inquiry under Section 5-A was merely formal. Even before the inquiry was held the Government had already made up its mind with regard to the site of the land.

14. The contention cannot be accepted for the simple reason that Section 4 of the Act enjoins duty upon the appropriate Government to issue notification declaring its intention to acquire the land in any locality for any public purpose or for a Company. In the case of Narendrajit vs. State of U.P., reported in A.I.R. 1971 SC 306, after referring to the provisions of Section 4 of the Act, the Supreme Court has inter alia observed that the process of acquisition must start with a notification under Section 4. Even in extremely urgent cases like those mentioned sub-section (2) of Section 17, the notification under Section 4 is a sine qua non. It is further observed that issuance of a notification under Section 4 is a condition precedent to the exercise of any further powers under the Act and a notification which does not comply with the essential requirement of that provision of law must be held to be bad. In para 9 of the reported decision it is observed as follows:

> *"Section 4(1) does not require that the identity of the lands which may ultimately be acquired should be specified but it enjoins upon the Government the duty to specify the locality in which the land is needed."*

> *In view of this settled legal position if the Government formed its tentative intention before issuing notification under Section 4 of the Act to acquire land for purposes of North Gujarat University at Patan in a particular locality it cannot be said that the Government made up its mind even before the inquiry under Section 5-A of the Act was completed. Unless this tentative decision is taken as regards the need of land in any locality for any public purpose, Section 4 notification cannot be issued at all. Therefore the allegation made that the decision to acquire the land was pre-determined and, therefore, the enquiry is bad has no merits and the same is rejected."*

29.5 Applying the principles laid down in the above quoted decision to the facts of the instant case, this Court finds that area to be developed under the S.E.Z.Act, 2005 was proposed by the developer i.e. the respondent No.1 and not by the Central Government. The Central Government had formed its tentative decision while issuing letter granting in principle approval without affecting the exercise

to be undertaken by the Deputy Collector under Section 40 of the Act. On the facts and in the circumstances of the case, this Court is of the opinion that it is not established by the petitioners that the inquiry under Section 40 of the Act was an empty formality or that the petitioners could not make effective representation on the matters mentioned in Section 40 of the Act. The detailed reports submitted by the Deputy Collector under Section 40 of the Act and Rule 4 of the Rules make it very clear that effective representations were made by the petitioners relating to the factors enumerated under Section 40 of the Act and Rule 4 of the Rules and, therefore, neither the notifications issued under Section 4 of the Act nor the declarations made under Section 6 of the Act are liable to be quashed on the ground that inquiries conducted under Section 40 of the Act and Rule 4 of the Rules were mere empty formality and eye-wash.

30. The ninth contention, which was raised by the learned counsel for the petitioners, was that as the Central Government had already decided while

granting in principle approval that the land under acquisition was suitable for the establishment of SEZ, the Deputy Collector and/or the Government of Gujarat could not have considered the factors enumerated in Rule 4 of the Rules independently nor the Deputy Collector could have considered the question whether the company had made its best endeavour to find out the lands in the locality suitable for the purpose of acquisition nor the Deputy Collector could have independently formed an opinion that the area of the lands proposed to be acquired was not excessive nor could have he considered the question, whether the company was in a position to utilize the lands expeditiously and, therefore, the reports submitted by the Deputy Collector under Rule 4 of the Rules should be treated as exercise in futility as well as an eye-wash and acquisition proceedings should be quashed.

30.1 Mr.Mihir Joshi, learned Additional Advocate General, submitted that grant of in principle approval cannot be construed as placing fetters on the power of the Deputy Collector to consider the

matters specified in Rule 4(1) of the Rules more particularly when the area in which the SEZ is to be established was specified by the respondent No.1-company as a developer and not by the Central Government or the State Government. Mr.K.S.Nanavati, learned Senior Advocate for the respondent No.1-Company contended that a bare reading of the reports submitted by the Deputy Collector under Rule 4 of the Rules makes it more than clear that on the basis of the materials produced before him, the Deputy Collector in his reports mentioned that: (i) the company had made its best endeavour to find out lands in the locality suitable for the purpose of acquisition; (ii) the company had made all reasonable efforts to get such lands by negotiations with the persons interested therein on payment of reasonable price and such efforts have failed; (iii) the land proposed to be acquired is suitable for the purpose; (iv) the area of land proposed to be acquired is not excessive; (v) the company is in a position to utilize the land expeditiously; and (vi) though the land proposed to be acquired is not good agricultural land, no alternative suitable site could be found so

as to avoid acquisition of the land and, therefore, the submission made by the learned counsel for the petitioners based on the grant of in principle approval by the Central Government should not be accepted by the Court.

30.2 While dealing with this contention, this Court finds that on the basis of the materials produced during the course of inquiry conducted under Rule 4 of the Rules, the Deputy Collector recorded findings namely; (i) that the company had made its best endeavour to find out lands in the locality suitable for the purpose of acquisition; (ii) that the company had made all reasonable efforts to get such lands by negotiations with the persons interested therein on payment of reasonable price and such efforts have failed; (iii) that the land proposed to be acquired is suitable for the purpose; (iv) that the area of land proposed to be acquired is not excessive; (v) that the company is in a position to utilise the land expeditiously; and (vi) though the land proposed to be acquired is not good agricultural land, no alternative suitable site could

be found so as to avoid acquisition of the land. As noticed earlier, before conducting the inquiry, the Deputy Collector had called for necessary report from the District Agricultural Officer because this is the requirement of law as provided in Rule 4(2)(i) of the Rules. The record shows that the District Agricultural Officer, Jamnagar, had submitted his report with forwarding letter dated April 19, 2006. The said report roughly runs into 35 pages. In the lengthy report of the District Agricultural Officer, there is no mention of grant of in principle approval by the Central Government. The three relevant findings, which are recorded by the District Agricultural Officer, are as follows:

(a) that the lands proposed to be acquired are contiguous to the lands of M/s.Reliance Industries Limited;

(b) that the lands to be acquired are dry non-irrigated/irrigated and it was possible to raise crops on the lands only with the help of rainy water, whereas the fertility of the lands was ordinary; and,

(c) just adjoining the lands to be acquired, there is land belonging to M/s.Reliance Industries Limited whereas on one side of the lands to be acquired, a railway line passes and, therefore, no alternative land in the vicinity is available for acquisition.

30.3 Having gone through the lengthy petition as well as rejoinders filed by the petitioners, this Court finds that the petitioners have not challenged the findings recorded in the report of the District Agricultural Officer, Jamnagar. On the basis of the conclusions drawn by the District Agricultural Officer in his report, the Deputy Collector was justified in mentioning in his report that the company had made its best endeavour to find out the lands in the locality suitable for the purpose of acquisition; that the land proposed to be acquired was suitable for the purpose and though the land proposed to be acquired was not good agricultural land, no alternative suitable site could be found so as to avoid acquisition of the land. Therefore, this Court is of the opinion that it is factually

incorrect to plead that the abovereferred to findings recorded by the Deputy Collector in his reports were vitiated because of grant of in principle approval by the Central Government. The reasons which have weighed with this Court while negativing the contention that the grant of in-principle approval by the Central Government had vitiated the reports submitted by the Deputy Collector after conducting inquiry under Section 40 of the Act, would also apply with all force to the reports submitted by the Deputy Collector after conducting inquiries under Rule 4 of the Rules. The fact that the reasonable opportunity to present the case was afforded to the petitioners by the Deputy Collector during the course of inquiry conducted under Rule 4 of of the Rules is not in dispute. On the facts and in the circumstances of the case, this Court is of the opinion that grant of in principle approval by the Central Government had not fettered the exercise to be undertaken by the Deputy Collector under Rule 4 of the Rules and, therefore, the contention raised by the learned counsel for the petitioners regarding non-compliance of Rule 4 of the Rules cannot be accepted.

31. The tenth contention that the Deputy Collector while making inquiry under Rule 4 of the Rules had failed to determine the amount of compensation payable to the petitioners in terms of Sections 23 and 24 of the Act before coming to the conclusion that the price of the lands offered by the respondent No.1-Company during the negotiations was reasonable and, therefore, the reports submitted under Rule 4 of the Rules should be set aside, has no substance.

31.1 Rule 4(2)(ii) of the Rules will have to be construed in the light of the provisions of Rule 4(1)(ii) of the Rules. Rule 4(1)(ii), *inter alia,* provides that the Collector has to submit a report that the company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed. While determining the said question, the Collector has to determine the approximate amount of compensation likely to be payable in respect of the lands, which are sought to

be acquired. It may be mentioned that while exercising powers under Rule 4(2)(ii) of the Rules, the Deputy Collector does not make an award as contemplated by Section 11(1) of the Act, but determines the approximate amount of compensation likely to be payable in respect of the lands sought to be acquired and finds out whether the company had made all reasonable efforts to get the lands by negotiations with the persons interested therein on payment of reasonable price and such efforts have failed. From the contents of the reports submitted by the Deputy Collector under Rule 4 of the Rules, it is quite clear that the Deputy Collector had noticed that the negotiations had taken place between the respondent No.1 company and the lands holders and that the respondent No.1-company had offered price of Rs.63,000/- per *vigha* for *bagayat* land and Rs.53,000/- per *vigha* for *jarayat* land. The reports further indicate that the Deputy Collector had taken into consideration the fact that 54 landowners had demanded rate of Rs.3,00,000=00 to Rs.6,40,000=00 per *vigha* whereas some landowners had demanded price of Rs.400=00 per square metre. Thereupon, the Deputy

Collector had taken into consideration Government *Jantri* for determination of the compensation as required by Rule 4(2)(ii) of the Rules and found out that as per the Government *Jantri, bagayat* lands have the value of Rs.1,50,000=00 per hectare, i.e. Rs.24,000/- per *vigha,* whereas as *jarayat* lands have the value of Rs.1,25,000=00 per hectare, i.e. Rs.20,000=00 per *vigha.* The report further shows that the Deputy Collector had taken average sale price of the lands in last five years, which indicated that the value of the land was Rs.1,08,653/- per hectare. The price as indicated in the Government *Jantri* and average sale price of the lands in last five years would be determination of compensation in terms of Sections 23 and 24 of the Act within the meaning of Rule 4(2)(ii) of the Rules. Therefore, factually, it is wrong to contend that the price of the lands was not determined by the Deputy Collector as required by Rule 4(2)(ii) of the Rules while ascertaining as to whether the respondent No.1-Company had made attempts to acquire the lands from the interested persons after offering reasonable price of the lands and, therefore, the contention that the Deputy Collector

while making inquiry under Rule 4 of the Rules had failed to determine the amount of compensation payable to the petitioners in terms of Sections 23 and 24 of the Act before coming to the conclusion that the prices of the lands offered by the respondent No.1 company during the negotiations was reasonable and, therefore, the reports submitted under Rule 4 of the Rules should be set aside, cannot be accepted.

32. The eleventh contention that the lands under acquisition are situated on the boundary of the existing refinery of M/s.Reliance Industries Limited, which is the second largest refinery in the world and that the factor, namely, that the lands to be acquired had potential value also should have been taken into consideration while ascertaining as to whether the attempts were made by the respondent No.1 to acquire the lands by negotiations after offering reasonable price of the lands has no substance. As far as this question is concerned, it is relevant to notice that exercise contemplated by Rule 4(2)(ii) of the Rules is required to be undertaken by the

competent authority to satisfy itself that the Company had made all reasonable efforts to get such lands by negotiations with the persons interested therein on payment of reasonable price and such efforts had failed. As noticed earlier, the respondent No.1 had offered Rs.63,000/- per *vigha* for *bagayat* land and Rs.53,000/- per *vigha* for *jarayat* land. No evidence was produced by the petitioners to indicate that the price of the lands acquired was more that what was offered by the respondent No.1-Company. In order to ascertain, whether the price offered by the respondent No.1-Company was reasonable or not, the Deputy Collector had taken into consideration the price of the lands as reflected in Government *jantri* and the price of the lands sold in the vicinity during the last five years. After taking into consideration, the price of the lands, as reflected in *jantri* and the sale-deeds of the last five years, a finding was recorded by him that the Company had made all reasonable efforts to get such lands by negotiations with persons interested therein on payment of reasonable price and such efforts had failed. Though contrary evidence had been not

produced by the petitioners to indicate that actual value of the lands was higher than the one offered by the respondent No.1-Company, the Deputy Collector, Jamnagar, broadly determined the approximate amount of compensation likely to be payable in respect of the lands having regard to the provisions of Sections 23 and 24 of the Act. However, in absence of any evidence produced by the petitioners, this Court is of the opinion that it was not necessary for the Deputy Collector to determine approximate amount of compensation likely to be payable in respect of the lands in exact terms of Sections 23 and 24 of the Act by taking into consideration potential value of the lands to be acquired and such an exercise may become necessary while making an award under Section 11(1) of the Act. The Deputy Collector had determined the approximate amount of compensation payable to the petitioners on the basis of the price of the lands indicated in *jantri* and other materials. It may be mentioned that Mr.Laljibhai Balabhai Bambhaniya, Deputy Collector, Jamnagar, has filed affidavit-in-reply on August 28, 2006 and in paragraph 6.29 of the reply, he has, inter-alia, stated on oath as under:

> *"... In the context of the proceedings under the said Rules, what is required to be determined is whether the company has made reasonable efforts to get such land by negotiation on payment of reasonable price. The price offered by the Company was not found to be absurdly low or unreasonable in view of the material on record so as to warrant an inference that the said offer did not tantamount to a reasonable effort for getting the land by negotiation. On the other hand the petitioners did not adduce supporting material to establish the price quoted by them was reasonable so as to warrant an inference that the refusal of the company to accept the same was unreasonable. Since there was no revised offer from the party it became self evident that the efforts to obtain the land by negotiation had failed."*

32.1 Further, Mr.Laljibhai Balabhai Bambhaniya, Deputy Collector, Jamnagar, has filed affidavit-in-reply dated September 12, 2006 to the amdnedment carried out by the petitioners. In paragraph 16 of the said reply, it is, *inter alia,* mentioned by him as under:

> *"It is further submitted that the answering deponent has taken into consideration the jantri prepared by the competent authority while preparing the report which is subject matter of challenge in the captioned petition. Annexed hereto and marked* ***ANNEXURE-I*** *is the copy of the Jantri, which was taken*

into consideration for determining approximate compensation while preparing the report. I further state for this, I have also taken into consideration the index for the last five years, sale transactions, which had taken place in the respective villages. ***ANNEXURE-II*** *annexed hereto is the copy of the said Index.*"

32.2 The above quoted paragraph from the reply affidavit filed the Deputy Collector, Jamnagar, would indicate that he had determined the approximate amount of compensation likely to be payable in respect of the lands in terms of the provisions of Sections 23 and 24 of the Act to ascertain whether the company had offered a reasonable price which was not less than the compensation so determined, to the persons interested in the lands proposed to be acquired.

32.3 The plea that potentiality of the lands sought to be acquired was not taken into consideration while determining the approximate amount of compensation likely to be payable to the petitioners and, therefore, the determination of approximate amount of compensation made by the Deputy Collector, Jamnagar, should be regarded as bad in

law, has no substance because approximate amount of compensation likely to be payable to the petitioners was required to be determined only with a view to ascertaining whether the company had offered reasonable amount of compensation which was not less than the compensation so determined, to the persons interested in the lands proposed to be acquired. Even if the potentiality of the lands had been taken into consideration while determining the approximate amount of compensation likely to be payable to the petitioners, it is not the case of the petitioners that the exercise would have indicated that the reasonable price of the lands to be acquired was not offered to them by the respondent No.1-Company during the negotiations. In **Pratapsang Naranji Jadeja (Supra)** it was argued that the Deputy Collector had not fixed the compensation while holding inquiry under Rule 4 nor had ascertained that the Company had offered a reasonable price for the land and therefore, the acquisition was liable to be quashed. The Division Bench of this Court negatived the said contention in the following terms:

> "17. The Counsel for the petitioners contended that the Deputy Collector did not fix the compensation while holding inquiry under Rule 4 and that he did not ascertain that the Company had offered a reasonable price for the land. This contention also cannot be accepted. A copy of the report submitted by the Deputy Collector is produced before us. In the report, it is stated that land owners wanted compensation at the rate of Rs.2 Lacs per Bigha. The land value was approximately fixed at Rs.17,500/- per Bigha for Jirayat land and Rs. 35,000/- per Bigha for Bagayat land. In the report, it is stated that this amount was offered by the Company to the land owners, but they did not accept this amount and all the petitioners had claimed value of the land at the rate of Rs. 2 Lacs per Bigha. It is also pertinent to note that in the earlier acquisition proceedings, land value was fixed at Rs. 17,500/- per Bigha for Jirayat land and Rs. 35,000/- per Bigha for Bagayat land and it is stated in Clause 6(2) of the report that the said amount was just as per the extract of land sales of private lands. It was stated that the Deputy Collector conducted an inquiry under Rule 4 and fixed approximate land value and ascertained whether the Company was prepared to pay the amount to these land owners. It is also stated that the Company had issued notices to these petitioners to accept compensation, but, they refused to do so. In these backgrounds, we are unable to accept the contention of the petitioners' counsel that there was violation of the procedure contemplated under Rule 4."

32.4 On the facts and in the circumstances, this Court is of the opinion that neither the determination of the approximate amount of

compensation likely to be payable to the petitioners nor ascertainment of the fact whether company had offered reasonable amount of compensation, which was not less than the compensation so determined to the persons interested in the lands proposed to be acquired, was vitiated and, therefore, the contention raised by the learned counsel for the petitioners cannot be accepted.

33. The twelfth contention, which was raised by the learned counsel for the petitioners for consideration of the Court, was that out of the total acquisition of 10,000 acres, 6,000 acres of lands are to be utilised in the first phase though no time limit is fixed for the utilization of those lands in the first phase whereas there is absolutely no reference of time when the second phase would commence, and therefore, as the area of the lands proposed to be acquired is excessive and for 40% of the lands which are sought to be acquired, there is no use in contemplation by the respondent No.1, the acquisition proceedings should be quashed. It was argued that the Reliance Group of Companies has

tendency to grab maximum lands under the guise of acquisition of lands for the purposes of the Company and though the present refinery had commenced production somewhere in the year 1998-99, 1,400 acres of land originally acquired for refinery purpose has been leased by the Reliance Industries Limited to the respondent No.1-Company for the purpose of setting up SEZ and as 1,627 acres of land forming part of the original acquisition for refinery is at present being used for mango plantation, the acquisition of 3,027 acres of land should be regarded as excessive. It was argued that the report of the Deputy Collector submitted under Rule 4 of the Rules has not taken into consideration the matter whether the land proposed to be acquired is excessive or not in its true perspective, and therefore, the declarations made under Section 6 of the Act should be quashed.

33.1 As against this, Mr.Mihir H.Joshi, learned Additional Advocate General for the State, argued that the project which is undertaken by the respondent No.1 is an integrated infrastructure development project and not a common project like

highway project, etc. and therefore, the need to acquire 10,000 acres of land cannot be regarded as excessive. What was highlighted was that this being an integrated project, the respondent No.1-Company may require acquisition and transfers of lands to set up infrastructure as defined in the SEZ Act, 2005, and therefore, the acquisition of the lands in the instant case cannot be regarded as excessive. The learned Additional Advocate General pointed out that the question whether the extent of the lands acquired is excessive or not has been specifically gone into and considered by the Deputy Collector in his reports which are approved by the Collector as well as the State Government and therefore, while exercising powers under Article 226 of the Constitution, this Court should not sit in appeal over the decisions of the competent authorities and go into the question whether the extent of land sought to be acquired is excessive or not.

33.2 Mr.K.S.Nanavati, learned Senior Advocate for the respondent No.1-Company, submitted that the Courts have taken a view that while acquiring the

land for the purpose of a large project, it is not only the immediate need which would be relevant for the purpose of consideration but also the future expansion would be a relevant consideration and therefore, the extent of acquisition of lands in the instant case cannot be regarded as excessive. In support of these submissions, the learned counsel placed reliance on the following decisions: (1) ***Pramodbhai Bhulabhai Desai v. Officer on Special Duty No.2 (Land Acquisition), Ahmedabad and others - AIR 1989 GUJ. 187,*** and (2) ***Bhagat Singh v. State of U.P. And others - (1999)2 SCC 384.***

33.3 Having considered the rival submissions of the learned counsels for the parties, this Court finds that the respondent No.1-Company was desirous of developing a Special Economic Zone in line with the policy of Special Economic Zones announced by the Government of India with a view to augmenting infrastructure facilities for export production. Therefore, the respondent No.1 had made an application on October 4, 2005, to the Industries Commissioner, Government of Gujarat, Gandhinagar,

indicating its desire to set up a Special Economic Zone at Jamnagar, as Reliance Industries Limited wanted to set up a Special Economic Zone in backward rural area of Jamnagar District with modern integrated infrastructure and the development of this project was bound to lead to fast track development of Saurashtra region of Gujarat State as well as national economy as a whole. In the application, it was mentioned that Special Economic Zone would be developed by the respondent No.1 and the Zone would also house proposed refinery of 30 MMTPA capacity and downstream petrochemical units. The respondent No.1, by addressing the said letter had requested the Industries Commissioner to recommend its case to the Ministry of Commerce, Government of India, for formal approval of the proposal with the State Government commitments outlined by the Ministry of Commerce. On consideration of said application, necessary recommendation was made by the State Government to the Central Government, after which, in-principle approval was granted to the respondent No.1 for setting up of the product specific SEZ for petroleum and petrochemicals at Lalpur Taluka of District :

Jamnagar, Gujarat. After obtaining in-principle approval of the Government of India, the respondent No.1, by letter dated November 10, 2005, had proposed to the State Government to initiate proceedings for acquisition of lands situated in villages Kanalus, Navagam, Kana Chhikari, Dera Chhikari and Padana of Lalpur Taluka, District : Jamnagar for establishment of Special Economic Zone. Along with the said proposal, the respondent No.1 had forwarded a copy of Memorandum and Articles of Association, copies of Village Forms 7/12 and 8-A relating to the lands situated in the above-mentioned villages, project-report and prescribed form containing necessary particulars with annexures, to the State Government. In view of the proposal dated November 10, 2005, made by the respondent No.1 to the State Government to acquire the lands of villages Kanalus etc. the Industries Commissioner, by letter dated November 10, 2005, had called for certain information and particulars from the respondent No.1 which were supplied by the respondent No.1 to the State Government along with its forwarding letter dated February 7, 2006. The respondent No.1 had addressed

another letter dated March 13, 2006, to the Industries Commissioner, Government of Gujarat, Gandhinagar, to recommend to the Revenue Department of the State Government and the District Collector, Jamnagar, for allotment of Government lands and acquisition of private lands. The Industries Commissioner had desired to discuss on the requirement of lands for petroleum and petrochemicals at Special Economic Zone at Jamnagar with the President (Com.) and Corporate Affairs of the respondent No.1-Company and accordingly, the President was requested to remain present on April 1, 2006, in the Chamber of Industries Commissioner to discuss the said subject. By communication dated April 18, 2006, the District Collector, Jamnagar, was informed by the Principal Chief Industrial Advisor about the requirement of lands by the respondent No.1 for setting up petroleum and petrochemical sector specified SEZ at Jamnagar. Thus, the record made available by the respondent No.1 indicates that the requirement to acquire the lands admeasuring 10,000 acres was approved by the Principal Chief Industrial Adviser and Joint Commissioner of Industries after

detailed scrutiny of relevant materials, and recommendation was made to acquire 4494.50 Hectares of land including 1400 acres of land obtained by the respondent No.1 from its sister-concern on lease basis, for the project.

33.4 The question whether the extent of land sought to be acquired was excessive or not has been gone into by the Deputy Collector while making inquiry under Rule 4 of the Rules and it was mentioned by the Deputy Collector in his report that the acquisition is not excessive at all. As explained by the Supreme Court in ***P.Narayanappa & Anr. v. State of Karnataka and Ors. (supra)***, after the liberalization of economic and industrial policies in the year 1991 increased emphasis has been given for Private Sector Investment not only in the Industrial Sector but also in the Infrastructural Sectors. It was noticed by the Supreme Court that as such a number of proposals, both from indigenous and foreign companies were received for considerable investments in infrastructural areas like establishment of power projects, express highways, ports, airports,

townships, industrial parks, etc. What is emphasized by the Supreme Court in the said decision is that, *"these projects need considerable extent of land for implementation"*. The Scheme of the SEZ Act, 2005, is such that the lands have to be developed in a vast manner and not only export oriented units are required to be set up but infrastructure facilities which include, industrial, business and social amenities like development of land, roads, buildings sewerage and effluent treatment facilities, solid waste management facilities, port, including jetties, single point moorings, storage tanks and interconnecting pipelines for liquids and gases, Inland Container Deport or Container Freight Station, warehouses, airports, railways, transport system, generation and distribution of power, gas and other forms of energy, telecommunication, data transmission network, information technology network, hospitals, hotels, educational institutions, leisure, recreational and entertainment facilities, residential and business complex, water supply, including desalination plant, sanitation facility, are required to be provided, which means that large

extent of lands would be required for the purpose of setting up SEZ. Therefore, the need of the respondent No.1-Company to acquire 10,000 acres of land, which on assessment of materials placed before the competent authorities was found to be not excessive, cannot be regarded as excessive merely because in the first phase, land admeasuring 6,000 acres is going to be used whereas no particulars are given as to time when the second phase would commence. The development of the project which is undertaken by the respondent No.1 bound to be gradual, but, acquisition of lands has to be for the entire area which is to be developed from time to time. Therefore, the area of lands to be acquired in the instant case cannot be regarded as excessive. The question whether the acquisition in a given case should be regarded as excessive or not has been considered by the Courts from time to time. In ***Pramodbhai Bhulabhai Desai v. Officer on Special Duty No.2 [Land Acquisition] Ahmedabad (supra)*** large area of land was acquired by the State Government for the developmental activities in the industrial field by the State Industrial Development Corporation for the

State of Gujarat. The acquisition was challenged before the Court and it was contended that with a malafide intention for development in an unknown future which might or might not fructify, large extent of lands were acquired and therefore, the acquisition proceedings should be annulled. The said argument was negatived by the Division Bench of this Court in the following terms:

> *"10. Considering the abovesaid particulars, in the light of the judgment referred by Mr. Oza, we are of the view that the land in question is needed for the development activities in the industrial field for the State of Gujarat and it cannot be said that such acquisition for developing the industry which is said to be one of the largest industrial estates in the whole of Asia, is done with a mala fide intention for development in an unknown future which may or may not fructify. In (1980) 21(2) Guj LR 239 : (AIR 1981 Guj 67) a Bench of this High Court has clearly stated "If land is not needed for a public purpose in a foreseeable future but is likely to be needed at a very distant or remote point of time for an anticipated need which may or may not come into existence, then, unless the need can be foreseen in a foreseeable future, no resort can be had to S.4."*
>
> *11. Foreseeability and its reasonableness depend on vision and the foresight of the planner and the project. The project like Narmada Project or establishment of new capital or an industrial township has to take care of the future needs not only of decades*

but even of the next century. If it is not done at the right time, later the lands would have been already put to such other usages which would make it impossible to implement the project. Therefore, it cannot be said that in every land acquisition the question of likelihood of the need has to be in the immediate future, that has to be examined having regard to the details and facts of each case and the public purpose.

12. In the report under S.5-A of the Land Acquisition Act it has been specifically stated that construction of certain stables as alleged by the petitioner in the disputed land and also having certain portion of the land for the purpose of cattle grazing cannot be accepted as an important public purpose when compared to the acquisition for the purpose of developing the industrial estate. As regards the contention that more than 125 hectares of the land of the petitioner have already been acquired and the present land can be denotified, the report in the 5-A enquiry clearly states as follows :

> *"It is true that the land of the petitioner has been acquired previously, but the land under acquisition is needed for suitable planning of the entire land in the estate."*

From the facts revealed above the necessity is genuine, the development is certain and the time taken cannot be considered as inordinate especially when such development projects for industrial development are resorted to, by acquiring vast area of lands.

13. As correctly contended by Mr. A.H. Mehta, learned counsel appearing for the GIDC, it is for the Government to decide the bona fides

of need and necessity for acquiring the lands. Unless the action taken by the Government was a fraudulent one, the decision taken by, the Government for acquiring the lands is a conclusive one. This view is supported by the decision in the case of Ratilal v. State of Gujarat reported in AIR 1970 SC 984. In that decision the Supreme Court observed :

"7. We are unable to accede to the contention of the appellant that a housing scheme for a limited number of persons cannot be considered as a public purpose. It was said that there were hardly about 20 members in the co-operative society in question and therefore the housing scheme for their benefit cannot be considered as a public purpose, it was also urged that there was no need for acquiring any land for the scheme in question. Section 6(3) of the Land Acquisition Act provides that a declaration under S.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 S.6 is a conclusive evidence of the fact that the land in question is needed for a public purpose - See Smt. Somavanti v. State of Punjab, (1963) 2 SCR 774 : AIR 1963 SC 151. That decision lays down that conclusiveness in S.6(3) must necessarily attach not merely to a 'need' but also to the question whether the purpose was a public purpose.

15. Considering the facts which we have discussed above we do not find any fraudulent intention on the part of the Government to acquire the land, but on the other hand, large area is being acquired for establishing one of the Asia's biggest industrial estates. The need and necessity for acquiring this land was taken into consideration by the Government and S.6 declaration has also been made in this case after 5A enquiry. On the facts and circumstances of the present case the bona fides of the Government in acquiring those lands cannot be questioned."

33.5 Again, in ***Bhagat Singh etc. v. State of U.P. and others (supra),*** the lands were acquired for setting up Mandi. It was contended by the appellants before the Supreme Court that the plots of appellants having large extent were sought to be acquired though there was no immediate need for those lands and therefore, the acquisition proceedings should be quashed. Disagreeing with the contention raised by the appellants therein, the Supreme Court has made following pertinent observations in paragraphs 28 and 29 of the reported decision:

"28. It has to be stated that the appellant has not alleged mala fides against the respondents. It is not for this Court to decide whether these plots are necessary or not for the proposed market. Learned counsel for the State Ms. Niti Dikshit argued, with

reference to the plan, that the plots of these appellants were necessary inasmuch the market had to be approached from this side where the appellants' property was located. The vacant land on the other side not being adjacent to be the proposed market, could not be acquired. The Government was able to get some land in land ceiling proceedings and from the Gaon Sabha and therefore with the monies available and earmarked for the market, it was considered that more land should be acquired keeping in view the future plans for the development of the market. It is now planned that in the first phase, there will be four sub-phases, in the following manner for 24 shops; 24 shops; 40 shops and 4 auction halls. Nearly Rs. 2 crores was set apart for development of Ac 18.00 initially.

29. We are of the view that the above facts do show that development of the market is in various phases and the future development of the Market in a growing town like Agra was kept in mind while acquiring this area. It is not for this Court to say that there was no need to acquire the appellant's lands for the market and that the remaining land was sufficient. If such a contention were to be accepted, each of the owners could equally advance such an argument making the scheme wholly unworkable. These appeals are therefore liable to be dismissed."

33.6 In ***State of Karnataka and Another v. All India Manufacturers Organization and Others, (2006)4 SCC 683***, the submission of the counsel for the land owners was that the Government of Karnataka, though ostensibly had purported to form an Express Highway,

had in reality allowed the second respondent to develop township as a developer by conferring a huge largesse by way of giving 20,000 acres of land whereas the land required for construction of four lane highway was 2,775 acres and as the remaining land was to be utilised for the purpose of development of towns, thereby, permitting the respondent No.2 to develop township as a developer and earn huge profits, the acquisition should be quashed. The Supreme Court noticed that the learned Judge of the High Court had taken the view that acquisition of 60% of the land by the State Government in so far as it related to the formation of roads and infrastructure development was concerned was valid while the acquisition of remaining 40% meant for the development of townships and convention centres was invalid and to that extent the acquisition was quashed. It was further noticed by the Supreme Court that the State Government as well as KIAD Board and Nandi had filed Appeals against the judgment of the learned Single Judge but the State Government and KIAD Board had withdrawn their appeals because by then, the State Government had appeared to

have second thoughts about the project and felt that the land acquisitions were far in excess of the project requirements. After deprecating the stand taken by the State Government and KIAD Board, the Supreme Court has made the following observations in paragraphs 76 to 79 of the reported decision:

> *"76. The next contention urged on behalf of the landowners is that the lands were not being acquired for a public purpose. The counsel who have argued for the landowners have expatiated in their contention by urging that land in excess of what was required under the FWA had been acquired; land for away from the actual alignment of the road and periphery had been acquired; consequently, it is urged that even if the implementation of the highway project is assumed to be for a public purpose, acquisition of land far away therefrom would not amount to a public purpose nor would it be covered by the provisions of the KIAD Act.*
>
> *77. In our view, this was an entirely misconceived argument. As we have pointed out in the earlier part of our judgment, the Project is an integrated infrastructure development project and not merely a highway project. The Project as it has been styled, conceived and implemented was the Bangalore-Mysore Infrastructure Corridor Project, which conceived of the development of roads between Bangalore and Mysore, for which there were several interchanges in and around the periphery of the city of Bangalore, together with numerous developmental infrastructure activities along with the highway at several points. As*

an integrated project, it may require the acquisition and transfer of lands even away form the main alignment of the road.

78. The various changes brought about to the KIAD Act, also reflect the intention of the State Legislature to provide for land acquisition for the Project. The expressions "industrial area" and "industrial infrastructural facilities" as defined under the KIAD Act, definitely include within their ambit establishment of facilities that contribute to the development of industries. We cannot forget that, as originally enacted, the KIAD Act had a different, narrower definition of "industrial area" in Section 2(6). In 1997, the definition was broadened to also include "industrial infrastructural facilities and amenities". Further, Section 2(7-a) was added to define "industrial infrastructural facilities" in a manner broad enough to take into its sweep the land acquisition for the Project.

79. The learned Single Judge erred in assuming that the lands acquired from places away from the main alignment of the road were not a part of the Project and that is the reason he was persuaded to hold that only 60% of the land acquisition was justified because it pertained to the land acquired for the main alignment of the highway. This, in view of the Division bench, and in our view, was entirely erroneous. The Division Bench was right in taking the view that the Project was an integrated project intended for public purpose and, irrespective of where the land was situated, so long as it arose from the terms of the FWA, there was no acquisition of characterizing it as unconnected with a public purpose. We are, therefore, in agreement with the finding of the High Court on this issue."

33.7 Having regard to the principles laid down by the Supreme Court and this Court in the abovequoted decisions, the extent of acquisition of the lands in the instant case cannot be regarded as excessive. Under the Scheme of SEZ Act, 2005, the developer has to indicate that he is in possession of the lands and would acquire further lands for the purpose of providing infrastructure as provided in the SEZ Act, 2005, and the Rules. Therefore, Reliance Industries Limited has granted lease of the lands admeasuring 1,627 acres which cannot be termed as an illegal transaction. The contention therefore that extent of 40% of the lands acquired is excessive and therefore acquisition proceedings should be quashed cannot be accepted by the Court. The contention that the Reliance Group of Companies has tendency to grab maximum lands under the guise of its purpose and that 1,400 acres of land original acquired for refinery purpose is today unutilised and therefore, the acquisition of lands in the instant case should be considered as excessive is devoid of merits. Under the Scheme of SEZ Act, 2005, even green area is

required to be provided. Further, even if it is assumed for the sake of argument that 1,400 acres of land originally acquired for refinery purpose by Reliance Industries Limited is being used for growing mangoes, one need not jump to the conclusion that the respondent No.1 herein would also put the lands sought to be acquired for mango plantation. On the facts and in the circumstances of the case, this Court is of the opinion that the claim advanced by the petitioners that acquisition of 3,027 acres of land should be regarded as excessive and acquisition proceedings should be quashed has no merits and cannot be accepted.

34. The last and thirteenth contention, which is raised by the learned counsel for the petitioners, is that the petitioners, whose lands are sought to be acquired, would be uprooted from their day-to-day livelihood activities and as they are not rehabilitated by the respondent No.1, the acquisition proceedings should be quashed. It is argued that where a farmer is deprived of his agricultural land and his residential premises, he is required to be

rehabilitated and re-settled and as in the instant case, 90% of the petitioners are going to lose their total holdings of agricultural lands, they should have been rehabilitated before initiating acquisition proceedings and therefore, the acquisition should be quashed by the Court. What is pointed out to the Court is that the petitioners are not engaged in any other activities except agricultural and cattle breeding but since the entire *Gauchar* land of the villages and waste lands are also being alloted to the respondent No.1-Company, the petitioners cannot continue their activities of cattle breeding as a result of which, they will be totally deprived of their agricultural activities and therefore, in absence of their rehabilitation, continuance of acquisition proceedings should be treated as bad in law. According to the learned counsel for the petitioners, residential premises in the villages will be comparable to prisons and therefore, in absence of any rehabilitation scheme mooted by the respondent No.1-Company, the acquisition proceedings should be regarded as illegal. What is highlighted is that under the SEZ Rules, 2006, a provision is made

which casts duty on the developer to provide for rehabilitation whereas prescribed form for making application for acquisition also provides that if the farmer loses his entire holding of the agricultural land, proper attention should be paid by the developer for rehabilitation of such person and as the respondent No.1 has not provided rehabilitation scheme, the acquisition proceedings should be quashed. In support of these submissions, the learned counsel for the petitioners has relied upon the following decisions: (1) ***Narmada Bachao Andolan v. Union of India & Ors. - (2001) 1 GLR 434,*** *(2)* ***Banvasi Seva Ashram v. State of U.P. and others - AIR 1992 SC 920,*** *(3)* ***Gadigeppa Mahadevappa Chikkumbi v. State of Karnataka and others - AIR 1990 KARNATAKA 2,*** *(4)* ***Olga Tellis and others v. Bombay Municipal Corporation and others - AIR 1986 SC 180,*** *(5)* ***State of U.P. v. Smt.Pista Devi and others etc. etc. - AIR 1986 SC 2025, and*** (6) ***Dalmia Cement (Bharat) Ltd. and another v. Union of India and others - (1996) 10 SCC 104.***

34.1 Mr.Mihir Joshi, learned Additional Advocate General, contended that the contention regarding

rehabilitation is not only vague but without any material particulars and therefore, should not be entertained by the Court. What was pointed out by the learned Additional Advocate General was that the lands of the petitioners are being acquired under the provisions of the Land Acquisition Act, 1894, which provides for adequate compensation as well as procedural safeguards and as the lands are being acquired under the procedure established by law, the acquisition proceedings cannot be treated as violative of rights of the petitioners guaranteed under Article 21 of the Constitution. What was maintained by the learned Additional Advocate General was that the petitioners cannot claim to be equated with displaced persons as their residential premises are not being acquired by the State Government and as rehabilitation in addition to market value of the lands is not contemplated under the Act, the claim based on rehabilitation should be rejected by the Court. According to the learned Additional Advocate General, there is no deprivation of right to livelihood in view of the provisions made in the Act for payment of solatium, compensation and interest

and therefore, the claim based on rehabilitation should be rejected by the Court.

34.2 On behalf of the respondent No.1-Company it was argued by their learned counsels that the provisions of the Land Acquisition Act, 1894, have been held to be valid which provides for grant of adequate compensation and takes into consideration even the damage that may be sustained by the land owners as a result of their being uprooted from the dwelling houses or from their economic activity and therefore, acquisition proceedings should not be quashed on the ground that rehabilitation of the petitioners is not provided for by the respondent No.1-Company. What was asserted on behalf of the respondent No.1-Company was that though right to shelter is undoubtedly a fundamental right, a person may be rendered shelterless, but it may be to serve larger public purpose and as the Supreme Court has not circumscribed the State's power of eminent domain even though a person whose land is being acquired compulsorily for the public purpose is rendered shelterless, the argument based on the

rehabilitation of the petitioners should be rejected by the Court. It was pointed out to the Court that if the contention raised by the learned counsel for the petitioners is given credence, no land can be acquired under the Act for any public purpose since in all such cases, the owner/ interested person would be deprived of his property and if it is required by the Court that rehabilitation should also be provided in case of acquisition of land under the provisions of the Act, it would amount to Legislation by the Court, which is not permissible and therefore, the contention advanced on behalf of the petitioners should not be accepted by the Court. In support of these submissions, the learned counsel for the respondent No.1 relied upon the following decisions: (1) ***Chameli Singh v. State of U.P. - AIR 1996 SC 1051,*** *(2)* ***New Reviera Coop. Housing Society and another v. Special Land Acquisition Officer and others – (1996)2 SCC 731,*** *(3)* ***Bhatt Indravadan Nathalal v. State of Gujarat – 2004 (2) GLH 224,*** *and (4)* ***State of Maharashtra and another v. Basantibai Mohanlal Khetan and others - AIR 1986 SC 1466.***

34.3 Having considered the rival submissions advanced at the Bar, this Court finds that the SEZ Act, 2005, does not provide for acquisition of lands. The lands of the petitioners have been acquired in the instant case under the provisions of the Land Acquisition Act, 1894. The State exercises its powers of eminent domain for public purpose by acquiring the lands of individuals by compulsory nature of acquisition. Section 23 of the Act provides for payment of compensation with solatium and other benefits. Thus, it would be wrong to equate acquisition of land under the provisions of the Act with deprivation of right to livelihood. As is evident from judicial pronouncements, Section 23(1) of the Act provides for compensation for the acquired land at the price prevailing as on the date of publication of Notification under Section 4(1) of the Act, to be quantified at a later stage of the proceedings. For disposition or dislocation even interest is payable under Section 23(1-A) as additional amount and provision for payment of interest under Sections 31 and 28 of the Act to recompensate the loss or right to enjoyment of the

property from the date of Notification under Section 23(1-A) and from the date of possession till compensation is deposited, is also made.

34.4 In ***Narmada Bachao Andolan v. Union of India & Ors. (supra)*** the lands were acquired for construction of Dam and because of construction of Dam, persons were ousted from their lands on account of height of the Dam. Grievance was made on behalf of those persons that they were not rehabilitated though the States were in possession of vacant lands suitable for rehabilitation of the oustees. Under the circumstances appropriate directions were given by the Supreme Court for rehabilitation of the oustees.

34.5 In ***Banvasi Seva Ashram v. State of U.P. and others (supra)*** lands were taken over by National Thermal Power Corporation for setting up Super Thermal Power Plant but rehabilitation of oustees who were in actual physical possession of lands was not provided for and therefore, appropriate directions were given by the Supreme Court to take measures to rehabilitate the evictees who were in actual physical

possession of the lands, houses, etc. Further, the judgment indicates that the direction were given with the consent of the parties. Therefore, the said judgment cannot be construed as laying down proposition of law that persons whose lands are acquired should also be rehabilitated over and above the payment of compensation to be made under the provisions of the Land Acquisition Act, 1894.

34.6 In ***Gadigeppa Mahadevappa Chikkumbi v. State of Karnataka and others (supra)***, it has been held that entire land of agriculturists cannot be acquired rendering them landless as it violates their right to adequate means of livelihood and right to pursue their avocations. What is held therein is that human right to live has a special meaning to a developing society in which predominant majority lives in villages below the poverty line and that the Constitution assures to the common man adequate means of livelihood and right to pursue his avocation and, therefore, whereby acquisition of land, the poor agriculturist was deprived of his sole means of livelihood should be rehabilitated in life.

34.7 In ***State of U.P. v. Smt.Pista Devi and others etc. etc. (supra),*** a suggestion was made by the Court and hope expressed that Merrut Development Authority for whose benefit the lands were acquired would as far as practicable, provide a house site or a shop site of the reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in question, but no proposition of law is laid down that in every case of acquisition of land under the provisions of Land Acquisition Act, 1894, rehabilitation should also be provided by the acquiring body over and above payment of compensation as contemplated by the Act.

34.8 Reliance is placed by learned counsel for the petitioners on paragraph-21 of the decision in the case of **Dalmia Cement (Bharat) Ltd. and another v. Union of India and others** (supra), which reads as under:

> *"21. Article 38 of the Constitution enjoins the State to strive to promote the welfare of the people by securing and protecting, as*

effectively as it may, the social order in which justice – social, economic and political – shall, inform all the institutions of the national life striving to minimise inequalities in income and endeavour to eliminate inequalities in status, facilities, opportunities amongst individuals and groups of people residing in different areas or engaged in different avocations. As stated earlier, agriculture is the mainstay of rural economy and empowerment of the agriculturists. Agriculture, therefore, is an industry. To the tiller of the soil, livelihood depends on the production and return of the agricultural produce and sustained agro-economic growth. The climatic conditions throughout Bharat are not uniform. They vary from tropical to moderate conditions. Tillers of the soil being in unorganized sector, their voice is scarcely heard and was not even remotely voiced in these cases. Their fundamental right to cultivation is as a part of right to livelihood. It is a bastion of economic and social justice envisaged in the Preamble and Article 38 of the Constitution. As stated earlier, the rights, liberties and privileges assured to every citizen are linked with corresponding concepts of duty, public order and morality. Therefore, the jural postulates from the foundation for the functioning of a just society. The fundamental rights ensured in Part III are, therefore, made subject to restrictions i.e., public purpose in Part IV Directives, public interest or public order in the interest of the general public. In enlivening the fundamental rights and the public purpose in the Directives, Parliament is the best Judge to decide what is good for the community, by whose suffrage it comes into existence and the majority political party assumes governance of the country. The Directive Principles are the fundamentals in their manifestos. Any digression is unconstitutional. The Constitution enjoins upon the Executive, Legislature and the Judiciary to balance the competing and conflicting claims involved in a dispute so as to harmonise the competing claims to establish

an egalitarian social order. It is a settled law that the Fundamental Rights and the Directive Principles are the two wheels of the chariot; none of the two is less important than the other. Snap one, the other will lose its efficacy. Together, they constitute the conscience of the Constitution to bring about social revolution under the rule of law. The Fundamental Rights and the Directives are, therefore, harmoniously interpreted to make the law a social engineer to provide flesh and blood to the dry bones of law. The Directives would serve the court as a beacon light to interpretation. Fundamental Rights are rightful means to the end, viz., social and economic justice provided in the Directives and the Preamble. The Fundamental Rights and the Directives establish the trinity of equality, liberty and fraternity in an egalitarian social order and prevent exploitation.“

34.9 A perusal of the above-quoted paragraph does not indicate that any principle of law is laid down by the Supreme Court that in case of compulsory acquisition of land under the provisions of the Act, a person whose land is acquired should be rehabilitated in life over and above payment of compensation under the Act.

34.10 It may be mentioned that the question of rehabilitation of released bonded labourers, rehabilitation of persons migrating from Punjab following militant activities there, rehabilitation

of tribals who were settled in land sought to be acquired for Dam projects, rehabilitation of the undertrials, rehabilitation of victims of 1984 riots, rehabilitation of victims of Bhopal Gas Leak Disaster, rehabilitation of sex workers rescued and rehabilitation of their children, rehabilitation of Adivasis and other backward class of people using forests as their habitat and means of livelihood, rehabilitation of land owners whose lands are acquired for setting up Thermal Power Project by NTPC, rehabilitation of girls lodged in protective houses of the State, rehabilitation of the licenced hawkers who are removed, etc., stands on a different footing than rehabilitation of the persons whose lands are acquired for public purpose under the provisions of the Land Acquisition Act, 1894.

34.11 The question whether the right guaranteed under Article 21 of the Constitution is violated if a person whose land is acquired is paid compensation but not rehabilitated is squarely covered by the decisions cited at the Bar by the learned counsels for the respondent No.1-Company.

34.12 In ***Chameli Singh v. State of U.P. (supra)***, the Supreme Court has made following pertinent observations in paragraph 17 of the reported decision which makes it evident that in case of compulsory acquisition of land under the provisions of the Land Acquisition Act, 1894, there is no deprivation of right to livelihood under Article 21 of the Constitution:

> *"17. In every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The State exercises its power of eminent domain for public purpose, the individual's right of an owner must yield place to the larger public purpose. For compulsory nature of acquisition, sub-section(2) of Section 23 provides payment of solatium to the owner who declines to voluntarily part with the possession of land. Acquisition in accordance with the procedure is a valid exercise of the power. It would not therefore, amount to deprivation of right to livelihood. Section 23(1) provides compensation for the acquired land at the prices prevailing as on the date of publishing Section 4(1)notification, to be quantified at later stages of proceedings. For dispensation or dislocation interest is payable under Section 23 (1-A) as additional amount and interest under Section 31 and 28 of the Act to recompensate the loss of right to enjoyment of the property from the date of notification under Section 23 (1-A) and from the date of possession till compensation is deposited.*

> *It would thus be clear that the plea of deprivation of right to livelihood under Article 21 is unsustainable."*

34.13 This question was again considered by the Supreme Court in the case of ***New Reviera Coop. Housing Society and another v. Special Land Acquisition Officer and others (supra)***. The question considered was whether the acquisition of the land by the State offends right to livelihood, right to shelter or dignity of a person and whether the State was obliged to provide alternative site. After considering the provisions of the Constitution and the Land Acquisition Act, 1894, the Supreme Court has held as under in paragraphs 7 and 8 of the reported decision:

> *"7. The appellant herein filed a writ petition contending that the acquisition is violative of Article 21 of the Constitution violating his dignity of person, and deprives his right to shelter and also makes him shelterless. He referred to various steps taken by him to have his title to the flat established. It is not necessary to dilate upon all the details in that behalf. Suffice it to state that as on the date of the notification, he was the owner of Flat No.27. The question is whether the acquisition offends Article 21. The State with a view to serve public purpose is entitled to acquire the land by exercising*

its power of eminent domain and the LAO is empowered under Section 23 of the Act to determine the compensation to the land acquired. Under the scheme of the Act if the owner is dissatisfied with the determination of compensation made by the Collector under Section 11, a reference under Section 18 is provided for and the court would, on adduction of evidence by the parties determine proper compensation payable to the acquired land under Section 23(1) of the Act. Burden is on the claimant to prove that the compensation offered is inadequate and seek determination of compensation under Section 23(1).

8. Three decisions of this Court have been cited by the learned counsel for the appellant to which reference is unnecessary for the reason that in none of the cases the question of validity of acquisition by the State exercising its power of eminent domain was put in issue on the anvil of Article 21. All those cases relate to providing alternative sites. Right to shelter is undoubtedly a fundamental right. A person may be rendered shelterless, but it may be to serve a larger public purpose. Far from saying that he will be rendered shelterless this Court did not circumscribe the State's power of eminent domain, even though a person whose land is being acquired compulsorily for the public purpose is rendered shelterless. If that contention is given credence no land can be acquired under the Act for any public purpose since in all such cases the owner/ interested person would be deprived of his property. He is deprived of it according to law. Since the owner is unwilling for the acquisition of his property for public purpose, Section 23(2) provides solatium for compulsory acquisition against his wishes. Under those circumstances, it cannot be held that the acquisition for public purpose violates Article 21 of the Constitution or the right

to livelihood or right to shelter or dignity of person."

34.14 Again, in ***Bhatt Indravadan Nathalal v. State of Gujarat (supra)***, a plea was raised on behalf of the petitioners that they were occupying shops since years when the same were acquired by the authorities under the provisions of the Land Acquisition Act, 1894, and therefore, they should be provided alternative shops. While holding that there is no provision for grant of alternative accommodation under the Act, the Division Bench negatived the said contention in the following terms:

"37. An issue regarding Promissory estoppel raised by the petitioners would not detain us much. There is no provision under the Land Acquisition Act to provide alternative accommodation to the owners/ occupants of the property sought to be acquired. Under the Act, they are entitled to the compensation only. Simply because on humanitarian ground, some assurances are given to provide alternative accommodation, it would not confer any legal right on the petitioners or under any legal obligation on the State to fulfil it. The petitioners' plea, therefore, cannot be accepted that unless and until any alternative accommodation is provided to them, they would not vacate the premises sought to be acquired. The State Government has, however, made it clear that the Government, at present, has no alternative place for shop

owners to accommodate them for their business. But when the Dakor town as well as Gomtighat can be developed in future, the Government will consider their cases. In this view of the matter, no further directions are required to be given. The respondent authorities will take an appropriate decision with regard to awarding of compensation and/ or providing alternative accommodation to the owners/ occupants of the lands/ shops in accordance with law."

34.15 Further, in **State of Maharashtra and another v. Basantibai Mohanlal Khetan and others** (supra), plea based on rehabilitation was examined in detail and after reviewing the law on the point, the Supreme Court has held as under:

(1)Article 21 has little to do with the right to own property as such;

(2)To rely upon Article 21 of the Constitution for striking down the provisions of the Act amounts to a clear misapplication of the great doctrine enshrined in Article 21.

(3)Land ceiling laws, laws providing for acquisition of land for providing housing accommodation, laws imposing ceiling on urban property etc. cannot be struck down by invoking Article 21 of the Constitution.

34.16 What is laid down by the Supreme Court in the said decision is that if the purpose for which the lands are acquired is public purpose and the owners are given opportunity to make representation before notification is issued all requirements of valid exercise of powers of eminent domain under the provisions of the Act are complied with and therefore, the Court cannot strike down the acquisition proceedings on the ground that rehabilitation was not provided.

34.17 From the record of the case, it is evident that the petitioners are not displaced persons within the meaning of th said term. The petitioners are not to be displaced from their residential houses. `Displacement' connotes that the person has been forced to leave his native place which is also known as “forced migration” or “forceful displacement from homestead”. The learned counsels for the respondent No.1-Company have rightly pointed out that even today, there is voluntary migration of villagers for better prospects in urban towns from the villages but

the village homes are intact. Therefore, the question of providing rehabilitation and re-settlement would not arise. As pointed out by the Supreme Court, rehabilitation and re-settlement may have to be provided where villages are totally uprooted but the facts of the case do not indicate that villages Kanalus, Navagam, Kana Chhikari, Dera Chhikari and Padana of Lalpur Taluka, District : Jamnagar, are going to be uprooted or that the petitioners would be displaced physically from their homes.

34.18 Section 23 of the Act *inter alia* provides for compensation to be paid for the damage, if any, sustained by the person interested at the time of the Collector's taking decision of the land, by reason of acquisition injuriously affecting his other property, movable or immovable, in any other manner or **his earnings** *(emphasis supplied).* Therefore, even if it is assumed for the sake of argument that the petitioners would not be able to carry their avocation after acquisition of the lands, they are not entitled to claim rehabilitation because of payment of compensation for damage, if any, sustained

by them, by reason of acquisition injuriously affecting their earnings, as contemplated under the provisions of Section 23 of the Act. The Scheme of the Act is such that a person whose land is acquired is entitled to compensation as provided under the Act but he is not entitled to land in place of land which is acquired. If such a concept is introduced by Court of law it would amount to re-writing the provisions of the Act of 1894 which is not permissible at all. If the claim advanced by the petitioners is accepted, that would amount to re-writing the Act and rehabilitation will have to be regarded as a condition precedent before exercise of powers of eminent domain for public purpose. Further, the Scheme of the Act is such that before the possession of the acquired land is taken, the amount of compensation determined by the Collector or the competent authority under Section 11 of the Act has to be deposited which would enable the person who is allegedly uprooted in life to settle down and seek alternative means of livelihood. It is rightly pointed out by the learned counsels for the respondents that the acquisition in this case does

not affect and deprive a person of his property even as the law contemplates that in such a situation the affected person has to be compensated in terms of Section 23 of the Act. Therefore, the plea based on rehabilitation cannot be accepted. The contention that the statutory form prescribed under the Rules framed under the SEZ Act, 2005, requires a developer to provide for rehabilitation and that the Government of Gujarat has also accepted as a policy to ask the Company to make provision for rehabilitation and therefore, acquisition proceedings should be voided as the respondent No.1-Company has not provided rehabilitation, has also no substance. The rehabilitation contemplated by the SEZ Rules, 2006, also will have to be construed as applicable only if a person is displaced as explained above. The petitioners have failed to establish that any of them is displaced from his homestead. Under the circumstance, the petitioners are not entitled to claim that acquisition proceedings should be voided on the ground that rehabilitation as contemplated by the Rules is not provided by the respondent No.1-Company. The record does not indicate that the

Government of Gujarat has accepted as a matter of policy to ask the Company to make provision for rehabilitation of a farmer whose land is acquired under the provisions of the Land Acquisition Act, 1894. The requisite column in the Form has been provided to elicit certain informations from the respondent No.1-Company. It could not be pointed out by the petitioners that the Government has accepted as a policy to provide for rehabilitation by the acquiring body in case of acquisition of agricultural land of a farmer. What is pertinent to note is that the State Government, in this case, has strongly pleaded before the Court that acquisition proceedings are not liable to be voided on the ground that rehabilitation Scheme is not provided by the respondent No.1-Company. If such a policy, as is contended by the petitioners, had been adopted by the State Government, the State Government would not have made submissions which are referred and dealt with earlier. Similarly, though the Central Government is impleaded as a party, the Central Government has not claimed before this Court that as the respondent No.1-Company has failed to provide for

rehabilitation, as indicated in the SEZ Rules, 2006, the instant acquisition proceedings are liable to be voided. In fact, rehabilitation scheme is not applicable to the cases on hand and therefore, such a claim is not advanced before this Court either by the State Government or the Central Government.

35. Though the point is raised in the petition and was argued at the Bar, but not mentioned in the written submissions presented on behalf of the petitioners is, that in view of Gujarat Act No.20 of 1965 by which Section 39 of the Act was amended, the provisions of Sections 4 to 16 and Sections 18 to 37 could not have been put in force in order to acquire the lands for the respondent No.1-Company as the previous consent by the appropriate Government was not given nor the Company had executed agreement before publication of the notifications issued under Section 4 of the Act in the official gazette and, therefore, the acquisition proceedings should be quashed, deserves to be considered by the Court. As far as this point is concerned, this Court finds that the point raised in the petitions stands clearly

covered by the decision of the Division Bench of this Court rendered in ***Pratapsang Naranji Jadeja vs. State of Gujarat & Ors. (supra).*** The said plea has been considered in detail and answered by the Division Bench in the following terms:

> "5. The Counsel for the petitioners contended that there was violation of various provisions contained in Land Acquisition Act and also the provisions contained in the Land Acquisition (Companies) Rules, 1963. It was argued that section 6 notification itself is illegal and contrary to section 39 of the Land Acquisition Act. The argument of the petitioners' Counsel is to the effect that Section 4 notification was issued by the Government prior to the consent of the appropriate Government. In this case, the land is sought to be acquired for the purpose of a house colony of the employees of the 4th respondent-Company. As regards acquisition of land for the purpose of Company, Sections 38 to 44-B of Part-VII of the Land Acquisition Act would apply. As per Section 41, the Company has to enter into an agreement with the Government and before any such agreement is entered into,the consent of the Government is necessary. Section 40 of the Act says that such consent shall not be given unless the Government is satisfied that the purpose of proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for providing any amenities to such workers or for construction of any building for any Company who is engaged in any industry or work which is for public purpose or for construction of any work which is likely to prove useful to the public. Before entering into any

agreement with the Company, the Government shall consider the report of the officer who held enquiry under section 40 and also the report if any submitted under section 5A of the Act. Section 41 says that before such agreement, the Government should be satisfied that the entire cost of the acquisition is paid to the Government and the Company would hold the land in terms of the agreement. The Government should also be satisfied that the Company will carry out the purpose for which the land is acquired within the time stipulated in the agreement.

6. Section 39 of the Land Acquisition Act is another relevant provision. The purpose and intent of this section is that various proceedings relating to acquisition shall not be put in force unless the consent of the appropriate Government is obtained and an agreement is entered into with the Company. Prior to the amendment by Act 68/84, section 39 of the Land Acquisition Act, 1894 was to the following effect :

"39. Previous consent of appropriate Government and execution of agreement necessary :-

The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned."

Acquisition and requisitioning of property being a matter included in the List-III of Seventh Schedule, the State Legislature is competent to bring out amendment to Land Acquisition Act, 1894 subject to the limitation prescribed under Article 254 of the Constitution. The Gujarat State Legislature amended the various provisions in the Land Acquisition Act, 1894, by Act

20 of 1965. Section 39 of the Principal Act was amended. In section 39 of the Principal Act, for the figure "6" the figure "4" was substituted. Act 20/65 received the assent of the President and it came into force on 9th July, 1965. The effect of the amendment of section 39 by Act 20/65 is that in the case of acquisition of land for any Company, sections 4 to 37 (both inclusive) shall not be put in force unless the consent of the State Government is obtained and an agreement is executed with the Company.

Section 39 of the Principal Act was amended by the Parliament by Act 68 of 1984. For the figures and brackets of "Sections 6 to 37 (both inclusive)" the figures and brackets "Sections 6 to 16 (both inclusive) and sections 18 to 37 (both inclusive)" were substituted. The effect of such an amendment was that Sections 6 to 37, except section 17, which relate to acquisition of land in cases of urgency, shall not be put in force unless consent of the appropriate Government is obtained and an agreement is reached by the Government with the Company.

7. The contention of the petitioners' Counsel is that the section 39 of the Land Acquisition Act, 1894 as amended by Gujarat State Legislature by Act 20/65 shall be the law applicable in the State of Gujarat and since section 4 notification was published on 15.2.1996 and the consent of the State Government was obtained on 1.6.1996, there is infraction of section 39 of the Act, therefore, the very notification under section 4, which is the foundation for this acquisition is illegal and void.

8. Learned Addl. Advocate General and the Counsel for the 4th respondent-Company contended that the amendment of section 39 by the Gujarat State Legislature by Act no.20/ 1965 has no application, as there was subsequent amendment of section 39 by the

Parliament. Therefore, it is argued on behalf of the respondents that amendment of section 39 effected by the Parliament by Act no.68/1894 shall have over-riding effect over the Gujarat Amendment Act in view of Article 254 of the Constitution. It is argued that there is repugnancy between law made by the State Legislature and the law made by the Parliament in respect of same subject matter and therefore, the law made by the Legislature of the State to the extent of its repugnancy to the law made by the Parliament shall be void. Article 254 of the Constitution reads as follows:-

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States-(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provisions of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State:

Provided that nothing in this clause shall

prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to amending, varying or repealing the law so made by the Legislature of the State."

Article 254 of the Constitution enables the State Legislature to enact any provisions which may go repugnant to the law made by the Parliament in respect of any of the matters enumerated in the concurrent list. If any such law is made by the State Legislature with respect to any matters included in the Concurrent List, the law so made by the Legislature of such State shall prevail in the State if it has been reserved for consideration of the President and has received his assent. Proviso to Article 254(2) says that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State. Originally under section 39 of the Act, before the consent of the appropriate Government is obtained, Sections 6 to 37 should not have been put in force. This was amended by the Gujarat State Legislature and instead of figure '6', figure '4' was added and this amendment of the State Legislature received assent of the President. This amended law prevailed in the State till the Parliament amended section 39 by Act no.68/1984 and the amendment brought out by the Parliament by Act no.68/1984 comes within the proviso to Article 254(2) of the Constitution. Therefore, whatever amendment made by the State Legislature is repealed by amendment of section 39 by Act no.68/1984 and the law so amended shall prevail over the law made by the State Legislature.

9. A similar question came-up for consideration before this Court in Dinesh Soni & others vs. O.N.G.C. & another, 1994(2)

G.L.H. page 131. By Act no.20 of 1965 the Gujarat State Legislature amended section 11 of the Act and for the first time introduced the concept of "consent award" and the Collector was empowered to act on agreement between the parties and to pass an award. As per this amended provision if all the parties interested in the land appear before the Collector and agree to the award, he can require such persons to execute an agreement in the prescribed form and pass an award. After this amendment of section 11 by the Gujarat State Legislature, the Parliament amended section 11 by Act no.68 of 1984. By this amendment by the Central Legislature, the Collector is authorised to pass award if the interested persons appear and agree in writing on the matters to be included in the award in the prescribed form. In the above decision, a question arose whether the procedure prescribed by section 11 as amended by the Gujarat State Legislature or the procedure prescribed under section 11 as amended by the Central Legislature would apply. It was held by the Division Bench of this Court that the law enacted by the Parliament shall prevail, as there is repugnancy. The Division Bench held in Para-36 as under:-

".....Sub.Art.(2) of Article 254 undoubtedly authorises the Legislature of a State to enact any provision repugnant to the provisions of any earlier law made by Parliament or existing law with respect to the manner in Concurrent List provided that such law of the Legislature of a State is reserved for consideration of the President and has received his assent. In such a contingency the law shall prevail in that State. The State of Gujarat when it enacted Gujarat Act no.20 of 1965 so as to amend the same and provisions of Land Acquisition Act, 1984 as stated hereinabove, it introduced sub-secs.(2) to (4) in Section

11 of the Principal Act. By specifically enacting such provision, the State Legislature permitted the Collector to make award based on an agreement between all the persons interested. It thus, authorised the Collector to make award based on consent or agreement duly signed and executed between the parties. However, the Union Parliament has subsequently with the effect from 29.4.84 enacted Land Acquisition (Amendment) Act, 1984 so as to introduce sub-secs. (2) to (4) in Section 11 of the Principal Act which achieve the same result which was achieved by sub-secs.(2) to (4) of Gujarat (Amendment) Act excepting that the procedure prescribed is slightly different. To the extent the procedure by sub-section(2) of Section 11 of Central Act is different from the procedure prescribed in sub-sec.(2) of Section 11 of the Gujarat Act it can be said that the Union Parliament has made law repugnant to the State Law. However, under proviso to sub-Art.(2) to Article 254 it was permissible for the Parliament to enact any law at any time with respect to same matter on which the State has made a law Union Parliament was, therefore, competent to make statutory law and it is the said law which would thereafter apply even in the State which has made the law under Article 254(2). In that view of the matter, there is no manner of doubt in holding that the amendment made by the Land Acquisition (Amendment) Act, 1984 would apply in the State of Gujarat and the State amendment made by Gujarat Act 20 of 1965 shall not apply.............."

10. The same question arose before Supreme Court in T. Barai vs. Henry Ah Hoe and another, A.I.R. 1983 S.C. 150. In that case,section 16(1)(a) of Prevention of Food Adulteration Act was amended by the

West Bengal State Legislature by West Bengal State Amendment Act of 1973 and by said amendment, offence under section 16(1)(a) was made punishable with imprisonment for life and, therefore, triable by a Court of Sessions, but later on a change was brought out by Central Amendment Act, 1976 which provided reduced punishment. There the punishment was reduced to 3 years instead of 6 years for the offence punishable under section 16(1)(a). The procedure for trial of this offence was also materially altered. The Supreme Court held that when Parliament stepped in and enacted the Central Amendment Act, it being a subsequent law made by Parliament with respect to the same matter, the West Bengal Amendment Act stood impliedly repealed. It is also important to note that Supreme Court observed that whenever there is arepeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow, unless a different intention is indicated in section itself. The law has been clearly laid down by the Supreme Court in Para-15 of the said decision, which reads as follows :-

"There is no doubt or difficulty as to the law applicable. Article 254 of the Constitution makes provision firstly, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List,and secondly, for resolving such conflict, Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such

repugnancy, be void. To the general rule laid down in Clause (1), Clause (2) engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to Clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A state law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together, e.g. where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1). That being so,

when Parliament stepped in and enacted the Central Amendment Act, it being a later law made by Parliament 'with respect to the same matter', the West Bengal Amendment Act stood impliedly repealed." (Emphasis Supplied).

11. In Lalbhai T.Patel vs. Addl. Special land Acquisition Officer, reported in 26(2) G.L.R. 609, also similar question was considered and it was observed as follows :-

"In a case where there is parliamentary law in regard to one of the matters in the Current List, the State cannot make law except in accordance with Art.254(2) of the Constitution. That provision is an exception to the rule embodied in Art.254(1) that the law made by the Parliament would always prevail over the law made by the State in regard to the matter in the Current List. Such a question would arise only when there is inconsistency or repugnancy. If both provisions,i.e. the State law and the Parliamentary law, cannot stand together, there would necessarily be repugnancy and the State law must give way to the law made by the Parliament. The exception to this is when the President examines, the law made by the State Legislature and on examination finds that assent could not be given. But the Parliament may make a subsequent exercise. Such subsequent exercise may be such as to add to, amend, vary or repeal the law of the State. The legislation by the Parliament would prevail over the State legislation thereafter. It is not necessary for the Parliament to expressly state that it addes to, varies, amends or repeals the law made by the State. If there is repugnancy between subsequent legislation made by the Parliament and the law operating in the State by virtue of Art.254(2) of the Constitution, the law by Parliament would prevail to the extent of such repugnancy."

12. Learned Counsel for the petitioners submitted that the amendment brought out by Central Amendment Act 68 of 1984 did not create any repugnancy to the law made by the State Legislature. The argument of the petitioners' Counsel is that repugnancy to the law passed by the Parliament was created by Gujarat Amendment Act 20 of 1965 and as the law made by the State Legislature received assent of the President, it shall prevail and subsequent law made by the Parliament has no application. According to the petitioners' Counsel, by Act no.68 of 1984, section 17 was deleted from the Sections 6 to 37 mentioned in section 39 of the Act and it has no effect of repeal to the law passed by State Legislature. We are not inclined to accept this contention, as the subsequent legislation made by the Parliament is on the same subject and covers same area in respect of a matter included in the concurrent list. The repeal, if any, of the State law need not be by express words. If the Parliament has enacted law on the same subject, it can be deemed that the State law to the extent of which its repugnancy, stood repealed. Therefore, it is clear that the provisions contained in Section 39 as amended by Act 68 of 1984 shall prevail over the amendment brought out by the State Legislature. In view of that matter,section 4 notification can be put into force even before a consent is obtained from the Government and an agreement is reached between the Company and the Government."

36. Having regard to the totality of the facts and circumstances of the case, this Court is of the

firm opinion that acquisition proceedings are not liable to be quashed on the ground that rehabilitation Scheme is not provided for by the respondent No.1-Company.

37. The points which have been dealt with were the only points which were advanced at Bar by the learned counsel for the petitioners for consideration of the Court. No other point has been urged for consideration of the Court in support of the reliefs claimed in the petitions. This Court does not find any substance in any of the contentions raised on behalf of the petitioners. Therefore, the petitions, which have no merit, are liable to be dismissed. For the foregoing reasons, all the petitions fail. Rule issued in each petition is discharged. Having regard to the facts of the case, there shall be no orders as to costs.

38. At this stage, Mr.R.D.Raval, learned counsel for the petitioners, prays that interim arrangement of not issuing notices to the petitioners under Section 9 of the Act, which was continued during the

pendency of the petitions pursuant to the statement made by the learned Additional Advocate General for the respondent No.2, be continued for a further period of eight weeks or status-quo, as existing today, be directed to be maintained for a period of eight weeks, to enable the petitioners to approach the higher forum.

39. This Court has heard the learned counsels for the parties on the question of prayer made by the learned cousnel for the petitioners. Mr.Mihir Joshi, learned Additional Advocate General, has asserted that no relief as prayed for by the petitioners should be granted after the Court has found that there is no merit in the petitions. It may be mentioned that as pointed out by the respondents, the holdings of the petitioners, in comparison to the extent of lands sought to be acquired, is very small, and they represent only 12% of the total lands acquired. As is pointed out by the respondent No.1-Company, delay in setting up of SEZ is likely to run into huge financial losses and the State is also likely to lose benefits which may flow from the

establishment of SEZ and industries. The Deputy Collector, in his report, has stated that the project which is undertaken by the respondent No.1 is likely to generate employment avenues for more than 2,50,000 unemployed persons. There is also possibility that if stay is granted, the Central Government may not grant final approval or the SEZ may be shifted to other State. There is no manner of doubt that grant of interim relief, as prayed for by the learned counsel for the petitioners, would have far reaching consequences. The Supreme Court, in ***Ramniklal N.Bhutta v. State of Maharashtra and others, A.I.R. 1997 SC 1236***, while emphasizing that in land acquisition cases, stay of acquisition proceedings should not be granted while exercising powers under Article 226 of the Constitution, has held that:

> *"...the Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 – indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance of some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation*

payable...”.

In view of the pertinent observations made by the Supreme Court quoted above as well as the facts emerging from the record of the case, this Court is of the opinion that the interim relief as prayed for by the learned Counsel for the petitioners cannot be granted and, therefore, the same is hereby refused.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)