

SHYAM NANDAN PRASAD AND ORS.

A

v.

STATE OF BIHAR AND ORS.

AUGUST 13, 1993

[A.M. AHMADI AND MADAN MOHAN PUNCHHI, JJ.]

B

Land Acquisition Act—Section 4(as applicable to Bihar)—Sections 3(c), 5A, 6, 35, 38—Public Purpose—Scope of—Obligation of the Collector and nature of his functions—Scope of Section 55 of the Act.

Acquisition of land for companies—Sections 39 and 40 of the Act—Scope of—Private Company vis a vis Government Company—Distinctive features—Relevance of the status of society.

C

The appellants are members of Bihar Finance Service House Construction Cooperative Society, floated by members of Bihar Finance Service who were landless and did not own residential plot or house in the city of Patna, but its membership was statedly open to everyone who was similarly landless. In 1973 the society put up a proposal for acquisition of 59.95 acres of land, upon which the State Government issued notification u/s 4 of the Land Acquisition Act inviting objections u/s 5A. This was followed after legal formalities, by notification u/s 6 of the Act in respect of the total land except 5 acres set apart for allotment to persons likely to be disturbed.

D

E

The High Court at Patna quashed the declaration u/s 6 of the Act and remitted the matter to the Government for reconsideration : Whether the impugned action was in violation of section 5A of the Act. The matter came up in appeal before this Court.

F

Allowing the appeal and remitting the matter to the High Court, this court

G

HELD : The compliance of Section 5A is mandatory. And affording of opportunity of being heard to the objector is a must. [539-E]

Shri Mandir Sita Ramji v. Lt. Governor of Delhi and others, [1975] 4 SCC 298 and Shri Farid Ahmed Abdul Samad and another v. The

H

- A *Municipal Corporation of the City of Ahmedabad and another*, [1976] 3 SCC 719, referred to.

B The provisions of Section 5A embody a just and wholesome principle that a person whose property is being or is intended to be, acquired should have the occasion to persuade the authorities concerned that his property be not touched for acquisition - the right is absolute, unless the appropriate government chooses to dispense with its applicability under the law. [539-F]

- C It is plain from the language of section 41 that unless the proposed acquisition is of the three kinds mentioned in clauses (a), (aa) and (b) of Section 40 and is found to be needed for one or the other of these purposes, neither is the appointed officer, to whom the enquiry is entrusted, empowered to verdict in favour of a company and nor is the government without recording such satisfaction expected to give consent.
- D The agreement is then required under Section 42 of the Act to be published in the official Gazette as soon as may be after execution and thereupon have the same effect as if it had formed the part of the Act. The right of the public to use the work being pervasive in the consideration of and acceptance of report by the Government, signified by consent,
- E goes to show the dominant purpose of public utility governing the deliberation and decision. [542-C-E]

- F Section 44B distinguishes between a private company and Government company. However, since the society is neither a Government company nor a private company the impediment of Section 44B towards confining the choice of acquisition for private company for one purpose is out, the Society as a public company would require to satisfy that it requires the land for any of the purposes mentioned in clauses (a), (aa) and (b) before it can obtain consent of appropriate Government. However, in order to approach the Government with a request for acquisition the company has to satisfy the provisions of Rule 4, while a Land Acquisition Committee is constituted under Rule 3 *ibid*. Rule 4 is mandatory and essential to be complied with.
- G

[542-F; 543-D, F; 545-H]

- H *State of Gujarat and another v. Patel Chaturbhai Narsibhai and*

others, [1975] 1 SCC 583; *State of Gujarat and others v. Ambalal Haiderbhai and others*, [1976] 3 SCC 495 (499) and *General Govt. Servants Cooperative Housing Society Ltd. and others v. Sh. Wahab Uddin and others*, [1981] 2 SCC 352, relied on. A

The acquisition of land for a company is in substance for a public purpose as all those activities mentioned in Section 40 serve the public purpose. The acquisition for the company and the purpose for it, can be investigated under Section 5A or Section 40 of the Act, necessarily after notification u/s 4 of the Act. [548-F] B

Babu Barkya Thakur v. State of Bombay (now Maharashtra) and others, AIR (1960) SC 1203, referred to. C

Therefore 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, 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 intended purpose. [549-B] D

The High Court should not have upset the notification u/s 6 of the Act as a whole and should have individualised justice vis-a-vis each writ petitioner before it, having regard to the equities interplaying in each case and to the regulation of its discretion keeping in view host of other factors which weigh with the High Court to deny, grant or mould relief even when illegalities in procedure keep staring. [549-D] E

CIVIL APPELLATE JURISDICTION : Civil Appeals No. 3902-26 of 1993. F

From the Judgment and Order dated 22.2.90 of the Patna High Court in CWJ No. 2755/88, 953, 957, 2963, 1618, 93, 924, 2780, 904, 940, 983, 998, 1040, 1041, 1042, 1108, 1179, 2365, 875, 877, 1688/84, 2962, 6000, 2849 & 5904/1983. G

P.P. Rao, S.S. Ray, R.K. Jain, M.L. Verma, R.Shankar Prasad, A.K. Srivastava, Rakesh K.Khanna, R.P. Singh, Manoj Goel, Ms. Abha R. Sharma, Ashish Verma, A. Sharan, K.L. Taneja, Ejaz Maqbool, B.K. H

- A Mishra, D.P. Mukherjee, B.B. Singh and Uma Dutta for the appearing parties.

The Judgment of the Court was delivered by

- B **PUNCHHI, J.** Special leave granted in this bunch of petitions.

- C These appeals are directed against the common judgment and order dated 22.2.90 passed by a Division Bench of the Patna High Court in a batch of writ petitions, preferred before it in the years 1983 and 1984, excepting one in the year 1988, whereby declaration under Section 6 of the Land Acquisition Act ('the Act') dated 16/18.3.83 was quashed and the case remitted to the State Government for further proceedings under two heads.

- D The appellants herein are a few members of the Bihar Finance Service House Construction Cooperative Society, a society registered wayback in the year 1973, under the Bihar and Orissa Cooperative Societies Act. Its members, the appellants state, are about 400 in number. It was stated to have been floated by members of the Bihar Finance Service who were landless and did not own any residential plot or house in the city of Patna. Statedly, its membership was not confined to the members of the Bihar Finance Service alone but was open to everyone who was similarly landless. The Society was organised and knit to secure from the State Government land by acquisition so that the society could give plots to its members or build houses and give them put its members. For the purpose, in 1973 itself it put a proposal to the State Government to acquire 59.95 acres of land in the revenue estate of village Kumhrar, a Part of the City of Patna. After some steps, the State Government issued a notification under Section 4 of the Act on 21.4.81 inviting interested persons to file their objections under Section 5A of the said Act. On objection received from interested persons, and disposed of by the Additional Land Collector, and on report submitted, declaration under Section 6 of the Act was made to acquire land to the extent aforementioned except 5 acres which were set apart for allotment to persons likely to be disturbed by the acquisition. On writ petitions filed, the High Court quashed the declaration under Section 6 remitting back the matter to the State Government for reconsideration on two counts, one such count being violation of the
- E
- F
- G
- H

mandatory provisions of Section 5-A. This is how the matter has come before us in appeal. A

It prominently needs to be mentioned, at this stage, that both the notifications under Sections 4 and 6 were issued in the State of law as was existing prior to the passing of the Land Acquisition (Amendment) Act, 1984 (Act No. 68/1984). This law on the subject rather was substituted and amended by various Bihar legislative enactments. It is to the law as applicable in the State of Bihar shall we henceforth advert to for deciding this matter. B

Section 4 of the Land Acquisition Act as applicable to Bihar provides as follows : C

"Sub-section (1):- Whenever it appears to the appropriate Government or the Collector that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published at the office of the Collector, at the office of the sub-divisional officer, at the offices of the smallest revenue administrative unit and Gram Panchayat, if any, constituted under the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948), and at some conspicuous place in the village in which the land is situated; and the Collector shall cause copies of the notification to be served on all persons known or believed to be interested in the the land." D E

Explanation:- For the purpose of this section the expression "smallest revenue administrative unit" shall mean "the revenue administrative unit next below that of a sub-division whether known for the time being as N.E.S. Block, Circle, Anchal or otherwise." F

"Sub-section (2):- Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government or the Collector in this behalf, and for his servants and workmen, to enter upon and survey and take lands of any land in such locality " G

By virtue of clause (c) of Section 3, the expression 'Collector' means the Collector of a district and includes a Deputy Commissioner, Additional H

A Collector, Additional Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act except the functions under Sections 4, 5-A, 6, 35 and 38.

B By virtue of clause (f) of Section 3 the expression "public purpose" includes provision for or in connection with:-

(i) sanitary improvements of any kind, including reclamation; and

C (ii) the laying out of village-sites, townships or the extension, planned development or improvement of existing village-sites or township."

D Sub-section (1) of Section 5-A as in Bihar provides that any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification referred to in the said sub-section at some conspicuous place in the village in which the land is situated or of the service of the copy thereof on him, whichever is later, object to the acquisition of the land or any land in the locality, as the case may be.

F Sub-section (2) substitutedly in Bihar provides that every objection under sub-section (1) shall be made in writing to the Collector who shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and making such further enquiry, if any, as he thinks necessary, decide the objection: Provided that the appropriate Government may, either of its own motion or on the application of any person interested in the land call for the record of the proceedings held by the Collector and pass such order as it thinks fit; and further that the order of the appropriate Government and subject to such order, the decision of the Collector, under clause (i) shall be final.

H At the pre-Section 6 stage, besides the mode of publications at various places where the land is situated, personal service of the copy of the notification is prominently required to be made on the person interested so that he can make objections in writing to the Collector, and on objections being made, the Collector is obliged to give to the objector

opportunity of being heard either in person or by pleader. The Collector is further obliged to hear all such individual objections, make such further enquiries as necessary and then required to make an appropriate decision reporting the same to the Government. The decision of the Collector is supposedly final unless the appropriate Government chooses to interfere therein and cause affectation, *suo motu* or on the application of any person interested in the land. These requirements obviously lead to the positive conclusion that the proceeding before the Collector is a blend of public and individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notification, giving him the opportunity of objecting to the acquisition and awakening him to such right. That the objection is to be in writing, is indicative of the fact that the enquiry into the objection is to focus his individual cause as well as public cause. That at the time of the enquiry, for which prior notice shall be essential, the objector has the right to appear in person or through pleader and substantiate his objection by evidence and argument. And lastly, since the decision of the Collector may turn out to be final, unless interfered with by the government, *suo motu* on application, the Collector's decision is that of a quasi-judicial authority, arrived at by quasi-judicial methods.

That the compliance of provisions of Section 5-A is mandatory, is beyond dispute. See in this connection, *Shri Mandir Sita Ramji v. Governor of Delhi and others*, [1975] 4 SCC 298 and *Shri Farid Ahmed Abdul Samad and another v. The Municipal Corporation of the City of Ahmedabad and another*, [1976] 3 SCC 719. Affording of opportunity of being heard to the objector is must. The provision embodies a just and wholesome principle that a person whose property is being, or is intended to be, acquired should have the occasion to persuade the authorities concerned that his property be not touched for acquisition. This right is not absolute, however, if the appropriate Government, in its discretion, chooses to dispense with its applicability by invoking urgency provisions of 17 of the Act. But once Section 5-A is kept applicable, there is no cause to treat its provisions lightly or casually.

The other count on which the High Court made the remand was the supposal violation of Section 40 of the Act and Rule 4 of the Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as 'the Rules') framed by the Central Government in exercise of the power

A conferred by Section 55 of the Act. To appreciate this aspect of the matter, it would have to be cleared as to what is the status of the cooperative society of which the appellants are the members. The cooperative society (which by now stands impleaded as a respondent but due to the Registry's procedural objection application for its transposition as appellant has not been heard) is a company by the thrust of sub-section (e) of section 3. It provides that the expression "company" means a company registered under the Indian Companies Act, 1982 or under the English Companies Act, 1862 to 1890, or incorporated by an Act of Parliament of the United Kingdom or by an Indian law or by Royal Charter or Letters Patent and includes a Society registered under the Societies Registration Act 1860, and a registered society within the meaning of the Cooperative Societies Act, 1912 or any other law relating to cooperative societies for the time being in force in any State. This definition in the Act is qualified with nothing repugnant to be found in the subject or context. A separate chapter in the Act as Part VII is provided for acquisition of lands for companies. Section 39 provides the previous consent of the appropriate Government for the purpose, and execution of an agreement between the State and the Company is necessary if land was being acquired by the State for the Company. The prohibition is to the effect that 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. Proceedings up to the conclusion of the result of objections under Section 5-A could, all the same, go on with the State Government cooperating but the provisions of Section 6 onwards till Section 37 (both inclusive) can only be deployed in order to acquire land for any company on the satisfaction of two conditions, that is, (i) the previous consent of the appropriate Government for the purpose, and (ii) the company having executed the agreement of the kind mentioned in the succeeding Sections. Section 40 provides that the consent of the appropriate Government shall not be available unless it is satisfied either on the report of the Collector under Section 5-A sub-section (2) or by an enquiry of the kind conceived of was held as provided in Section 40 itself. Either of the two reports, that is, one made by the Collector under sub-section (2) of Section 5-A and the other as a result of the deliberations under Section 40, are at par for adoption by the appropriate Government to give consent under Section 39. The enquiry conceived of under Section 40 could be through an officer

H

appointed by the appropriate Government, held at appointed time and place in order to determine which out of the following three objects of acquisition are sought to be achieved by the company: A

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling house for workmen employed by the company or for the provision of amenities directly connected therewith, or B

(aa) that such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose; or

(b) that such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public. C

The officer appointed to hold the enquiry is empowered under sub-section (3) of Section 40 to summon and enforce attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court. D

Thereupon Section 41, mentions that if the appropriate Government is satisfied after considering the report, if any, of the Collector under Section 5-A, sub-section (2) (and there may be none in an urgent acquisition) or on the report of the officer making an inquiry under Section 40, that the proposed acquisition is for any of the purposes referred to in clauses (a), (aa) or (b) of sub-section (1) of Section 40 it shall require the company to enter into an agreement with the appropriate Government, providing to the satisfaction of the appropriate Government for the following matters, namely:- E F

(1) the payment to the appropriate Government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the company; G

(3) the terms on which the land shall be held by the company;

(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the condition on which and the manner in which the dwelling houses H

A or amenities shall erected to provided;

(4-A) where the acquisition is for the construction of any building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for public purpose, the time within which, and the condition on which, the building or work shall be constructed or executed;

(5) where the acquisition is for the construction of any other work the time within which and the conditions on which the company shall be entitled to use the work.

C It is thus plain from the language of the Section 41 that unless the proposed acquisition is of the three kinds mentioned in clauses (a), (aa) and (b) of Section 40 and is found to be needed for one or the other of those purposes, neither is the appointed officer, to whom the enquiry is entrusted, empowered to verdict in favour of a company and nor is the Government without recording such satisfaction expected to give consent. The agreement is then required under Section 42 of the Act to be published in the official Gazette as soon as may be after execution and thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of the Act. The right of the public to use the work being pervasive in the consideration of and acceptance of report by the Government, signified by consent, goes to show the dominant purpose of public utility governing the deliberation and decision. Section 44-A imposes the restriction on transfer of any land acquired under Part VII by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government. And finally, Section 44-B distinguishes between a private company and a Government Company providing that notwithstanding anything contained in th Act. No land shall be acquired under this Part, except for the purpose mentioned in clause (a) of sub-section (1) of Section 40, for a private company which is not a Government company. The explanation added thereto says that "Private Company" and "Government Company" shall have the meaning respectively assigned to them in the Companies Act, 1956.

Now when we direct ourselves to the provision of the Companies Act, Section 2(10) provides that a company means a company as defined in Section 3, Section 3 defines company to be a company formed and registered under the Companies Act or an existing company as defined

therein. "Private Company" has been defined to mean a company by articles of which the right to transfer its shares, if any, is restricted and the numbers is limited to fifty, but not including some persons detailed therein, and prohibits any invitation to the public to subscribe for any shares in, or debentures of the company. In contrast, "Public Company" residually means a company which is not a private company. "Government Company" under Section 2(18) means Government company within the meaning of Section 617, which in turn says that a Government Company means any company in which not less than 51 per cent of the paid-up share capital is held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Government and includes a company which is a subsidiary of a Government Company as thus defined. So understood, the society of which the appellants are members could never be a Government company for no Government has subscribed to its share capital. The society could not also be a private company for it has more than 50 members, the figure of membership put at 400. Since the society is neither a Government Company nor a private company, the impediment of Section 44-B towards confining the choice of acquisition for a private company for one purpose is out. Since the society is not a private company, by process of exclusion it becomes under Section 3 of the Companies Act, a "public company" even though not formed and registered under the said Act but only by the statutory inclusion in Section 3(e) of the Land Acquisition Act bringing in a cooperative society registered under a state law to be definedly a company as if a company registered under the Companies Act. All the same, the society as a public company would require to satisfy in an enquiry under Section 40 of the Act that it requires that land for any of the purposes mentioned in clauses (a), (aa) and (b) before it can obtain consent of the appropriate Government on the basis thereof and enter in to an agreement as envisage under Section 41 before switching on to have the role of Section 6 onwards till Section 37 of the Act played. 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 alternate 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.

A

B

C

D

E

F

G

H

A But that is not the be-all and end-all for the company. In order to approach the Government with a request for acquisition the company has to satisfy the provisions of the Rules also. Rule 4 enjoins as under:-

B "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 -

C (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;

D (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;

E (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.

F

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

G

(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

H

to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the Company; and A

- (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 top pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land. B

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

(4) No declaration shall be made by the appropriate government under Section 6 of the Act unless— D

- (i) the appropriate Government has consulted that Committee and has considered the report submitted under this rule and the report, if any, submitted under section 5A of the Act; and E
- (ii) the agreement under Section 41 of the Act has been executed by the company.

Under Rule 3, a Land Acquisition Committee is constituted for the purpose of advising the appropriate Government in relation to acquisition of land under Part VII of the Act, which is required to tender it advice within one month from the date of which it is constituted though the time can be extended by two months. Here again the Collector is required to hold an enquiry in a quasi-judicial sense and would give not only to the company a reasonable opportunity to make good its representations in that behalf but would also, to fulfil the needs of rules of natural justice, give sufficient opportunity to the land owners to refute the case of the company at least in so far as the matter like negotiation of price is concerned, as also on other relevant matters. That Rule 4 is mandatory and essential to be complied with has been ruled by this Court in various decisions. Reference may be made to some of them being : *State of Gujarat and another v.* F

G

H

A *Patel Chaturbhi Narsibhai and others*, [1975] 1 SCC 583; *State of Gujarat and others v. Ambalal Haiderbhai and others*, [1976] 3 SCC 495 (499) and *General Govt. Servants' Cooperative Housing Society Ltd. and others v. Sh. Wahab Uddin an others*, [1981] 2 SCC 352.

B The High Court, in the facts and circumstances, has, however, held that no report of the enquiry under sub-Rule (2) of Rule 4 was forwarded by the State Government to the Land Acquisition Committee and it consented to the acquisition in violation of the command of law. The High Court has also gone on to say that the consent of the State Government violated sub-Rule (3) of Rule 4. On the aspect of Section 40 of the Act, C the High Court has even gone on to hold that the writ petitioners were not given opportunity to dispel the needs of the company by holding a proper enquiry. It seems innately to be entertaining the view that the Government would not have gone to give consent unless it could in the contemplated enquiry get a finding that the object of the acquisition was one of those as D mentioned in Section 40. An lastly, the High Court has concluded that enquiry under Section 5-A was vitiated inasmuch as interested persons were not sent personal notices of the notification a required under the law, those who received such notices and had objected, were not given proper opportunity of being heard, the file of objection summoned revealed a casual observance of the procedure, no proper opportunity was given to the E objectors to place material before the officer and that when the officer had himself obtained a report of spot inspection, he did not give opportunity to the objectors to dispel his impressions thereon. Apart from that the High Court suspected certain interpolations in the file. Thus impelled, the High Court went on to remand on account of vitiation of the enquiry under F Section 5-A of the Act and violation of the mandatory provision of Rule 4, and its compliance as a condition precedent to the employment of Section 6 of the Land Acquisition Act.

The picture will not be complete without the uncontroverted plea of the appellants being noted that by January 1984, after the agreement under G Section 41 was signed and published on 4th March 1983, and after the issuance of the declaration under Section 6 on 18th March 1983, an award was prepared for Rs. 89,28,663 which sum stood deposited with the government by the society by January 1984. The society claims that the possession of the land was given to it on 2.8.84 and many plots stood distributed H amongst its members by proper registered documents. On the latter aspect,

there was a dispute of fact. The writ petitioners who too were some cooperative house building societies, original land-owners and transferees of land, had been asserting that they were in possession, and some of them had claimed to have either erected or be in the process of erecting buildings. The High Court had, as an interim measure, ordered status quo to be maintained. The High Court in its final verdict posed the question as to which cooperative society could have dominance, as on both sides cooperative societies were pitted against each other, both having the avowed object of housing, and which one need be preferred was a baffling question. Learned counsel for the parties, besides confessing their respective points of view on law, ventured to show us documents about the enquiry supposedly held to satisfy the requirements of Section 40 or/and of Rule 4 of the Rules as also of proceedings under Section 5-A of the Act, for and against the governmental action. On the layers and layers of common facts, leaving aside individual facts, the High Court steered a common course to effect a remand. In the circumstances, we feel that it was a possible view which the High Court could have taken but this view put settlement of the dispute beyond sight. Here the High Court seems to have erred in not, at least, restricting the terms of the remand. Persons who had not gone before the High Court in writ petitions need not have been given relief. The remand should have been confined to the interests of those who were the objector writ petitioners before the High Court. There should not have been a remand as wholesome as it is. The declaration under Section 6 should have been allowed to be sustained pertaining to land in other than the land of the writ petitioners, and so far as the writ petition are concerned, their cases individually on both aspects need to have been seen by the High Court itself. And delay, if any, in the facts and circumstances of each case, in approaching the High Court could have had a determinative effect.

Instantly the Notification under Section 4 is couched in terms that land is required to be taken over by the Government for a public purpose, that is, for the Bihar Finance Service Housing Construction Cooperative Society, on the cost of Society. Though Section 4 above-quoted requires the appropriate government to notify its intention to acquire land which is needed or is likely to be needed for any public purpose, it nowhere makes it incumbent at that stage to specify as to whether the public purpose would be achieved by some activity of the government or would it be passed

A over to a company. Now here the intention of the government, as expressed, was to achieve the public purpose for providing the Society, at the cost of the Society, land for its avowed purposes. The interested persons moving objections under Section 5-A were made alive to the nature of the acquisition. Finally while issuing Section 6 notification, a declaration was made to acquire land for the same public purpose. This declaration was in consonance with sub-section (1) of Section 6 as substitutedly applicable in Bihar, which is as follows:-

C “(1) Subject to the provisions of Part VII of the Act, where the appropriate Government is satisfied after considering the Collector's report, if any, under the proviso to sub-section (2) of Section 5-A or the Collector is satisfied after hearing the objection, if any, under Section 5-A, particular land is needed for a public purpose, or for Company, a declaration shall be made by the appropriate Government or the Collector, as the case may be, to that effect in writing:

D Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by the Company or wholly or partly out of the Consolidated Fund of the State or some fund controlled or managed by a local authority.”

E 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) and others*, AIR (1960) SC 1203. 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's* case supra 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

H 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, 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.

Having thus clarified the law governing the field, we would open doors for streams of equities and discretions to enter in the exercise of power by the High Court under Article 226 of the Constitution. As observed earlier, we are of the view that the High Court should not have upset the notification under Section 6 of the Act as a whole and should have individualised justice vis- a-vis each writ petitioner before it, having regard to the equities interplaying in each case and to the regulation of its discretion keeping in view host of other factors which weigh with the High Court to deny, grant or mould relief even when illegalities in procedure keep staring. Thus for the view afore-expressed, we allow these appeals set aside the impugned orders of the High Court and remit all these matters back to it with the request that though it may take them up as a batch, it may give individual attention to each case, view the illegalities pointed by the writ petitioner in its right perspective having regard to the time factor and confine the relief, if due, to him separately. We shall not be taken to have controlled the discretion of the High Court in administering individualised justice and amongst others if may, with the cooperation of the Society and of the State Government, as also the writ petitioners examine the possibility of an equitable solution so that the first of law and the discretion of the Court do not hurt unbearably. We thus remit the matters to the High Court without any order as to costs.

S.P.S.

Appeals allowed.