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H.M.T. HOUSE BUILDING CO-OP. SOCIETY

v.

SYED KHADER AND ORS.

FEBRUARY 21, 1995

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[J.S. VERMA, N.P. SINGH AND S.P. BHARUCHA, JJ.]

Land Acquisition Act, 1894—Ss.3(cc), 3(e), 3(f)(vi), 39, 40 Acquisition for a deemed company—Appropriate government—Prior approval and not previous consent—A condition precedent not just a formality—Provisions must be strictly construed.

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The appellant, a Co-operative society, registered under the Karnataka Co-operative Societies Act, submitted a housing scheme to the State Government for acquisition of certain lands in Bangalore. The society also entered into an agreement with a construction company (respondent no. 11), which, for a consideration, assured acquisition of the land by the appropriate government. Respondent no. 11 had also entered into agreements with landowners who agreed to give their consent for acquisition.

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Appellant society, a deemed company under the Land Acquisition Act, submitted its housing scheme to the appropriate government which was allegedly approved by an order dated 7.11.1984. The society then entered into an agreement with the appropriate government agreeing to the conditions of acquisition as required under Part VII of the Act. The State government then issued a notification under section 4(I) proposing to acquire lands for the society on the grounds of public purpose.

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The said notification was challenged in the High Court by landowners and other persons affected thereby inter alia stating that the acquisition itself was not for a public purpose as respondent no. 11, had influenced the exercise of statutory power by the appropriate government for the substantial amount paid by the society as consideration for exercise of the same, and that it cannot be held that the appropriate Government had exercised its own independent discretion and that the exercise of power is not based on an objective consideration of the material on record.

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During the pendency of the writ petition, a declaration under Section

6(I) was issued by the State government pursuant to the earlier notification under challenge. Awards were made for that part of the land covered by the declaration. A

In the meanwhile, the Registrar of Cooperative Societies, Karnataka directed a statutory inquiry and a report relating to several societies including the Appellant Society was submitted pointing out several irregularities committed by the Appellant in the matter of admission of members and also that the Appellant had entered into an agreement with an agent, respondent no. 11, and had paid him Rs. 92,52,938 and Rs. 35 Lakhs to the Special Land Acquisition officer. B

The High Court allowed the writ petitions, quashed the entire acquisition and *inter alia*, held (a) The acquisition was not for a public purpose and not for the benefit of bonafide members of the society; (b) On the basis of the enquiry report, many of the societies manipulated membership so as to enroll all those who are desirous of purchasing sites as also those who do not possess the territorial or other qualification as members; (c) that the society had indulged in commercial venture for sale of the sites; hence the acquisition of the lands under the provisions of the Act of 1984 was a colourable exercise of power and suffers from legal malafides and; (d) that it defeats the provisions of the Bangalore Development Authority Act. C D

The High Court observed that it was necessary that the government should frame rules for according previous approval for acquisition of lands for housing co-operative societies *inter alia* prescribing the procedure for inquiry and report to aid the government in deciding whether or not approval should be given for carrying out such schemes. E F

In this appeal, the Society contended that as the notifications under Sections 4(1) and 6(1) were issued beyond the time stipulated in the agreement it should be held that the State government had exercised its statutory power for acquisition in normal course only after taking all facts and circumstances into consideration and that merely because the society had entered into an agreement with respondent no. 11, who for a consideration assured that the land would be acquired by the government, no adverse inference could be drawn. G

Dismissing the appeal, this court H

A HELD : 1. The prior approval of the appropriate government as required under section 3(f)(vi) of the Land Acquisition Act is not just a formality; it is a condition precedent to the exercise of the power of acquisition by the appropriate government for a housing scheme of a cooperative society. In the present case there has been contravention of **B** Section 3 (f)(vi) of the Act in as much as there was no prior approval of the State government as required by the said section before steps for acquisition of the lands were taken. [215-G, 217-E]

C 2. The allegation made on behalf of the appellant society that the housing scheme had been approved by the appropriate government on 7.11.1984 shall not be deemed to be a prior approval within the meaning of Section 3(f)(vi) but an order giving previous consent as required by Section 39 of Part-VII of the Act. [216-B]

D 3. In any acquisition by the appropriate government for any housing society there has to be a prior approval of such scheme by the appropriate Government. When the lands are acquired for any co-operative society with prior approval of the scheme by the State Government, there is no question of application of the provisions of Part VII of the Act. Such acquisition shall be on the mode of acquisition by the appropriate government for any **E** public purpose. [213-F]

F 4. The finding of the High Court that the statutory notifications issued under Section 4(1) and 6(1) of the Act have been issued due to the role of Respondent no. 11 is right. On the materials on record, the High Court was justified in coming to the conclusion that the proceedings for acquisition of the lands had not been initiated because the State government was satisfied about the existence of the public purpose but at the instance of the agent who had collected more than a crore of rupees for getting the land acquired by the State Government. [217-G-H]

G 5. As a result of quashing of the land acquisition proceedings including the notifications as aforesaid, possession of the lands shall be restored to the respective landowners irrespective of the fact whether they had challenged the acquisition or not. On restoration of the possession to the land owners they shall refund the amounts received by them as **H** compensation or otherwise in respect of their lands. [218-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3011-19 A
of 1995.

From the Judgment and Order dated 18.6.91 of the Karnataka High Court in W.P. Nos. 13357-65 of 1988.

Altaf Ahmad, Additional Solicitor General, G. Ramaswamy, N. Narashima Murthy, H.N. Salve, A.N. Jayaram, K.K. Venugopal, M.R. Janardhana and K.N. Bhat, S.K. Kulkarni, Surya Kant, S. Sivaswamy, P.K. Pillai, Dileep Pillai, R.S. Hedge, S.K. Agnihotri, T.V.S.N. Chari, G. Kasturi, K.S. Ramesh, G.R. Mohan, Pravir Chaudhary, M. Rajagopal, M. Veerappa, Lalita, K.H. Nobin Singh, S. Ganesh, M.S. Siddharaju, Kaushik, M.N. Shroff, R.P. Wadhvani, D.Singh, Ms. Kiran Suri, K.V. Mohan, N.D.R. Ramachandra Rao, T. Ray, Naresh Kaus, Vineet Kumar, Raju Ramachandran, S.N. Bhat, Josheph Pookkati, S.R. Bhat and K. Ramkumar for the appearing parties. B C

The Judgment of the Court was delivered by D

N.P. SINGH, J. Leave granted

The appellant is a House Building Co-operative Society of the employees of H.M.T. Limited, a Government Company (hereinafter referred to as the 'Society'). The society was registered for the purpose of acquiring land by purchase, mortgage, lease, exchange, gift or otherwise, and to develop the same by construction of roads, drains, parks, play grounds, schools, hospitals, waterworks, post-office and other amenities, required for a residential housing colony. The Society has been registered under the provisions of Karnataka Co-operative Societies Act. E F

The Society submitted its housing scheme to the State Government on 19.9.1984, for the purpose of acquisition of lands situated at Thindlu and Chikkabettahalli, for 1001 members of the Society. It is the case of the appellant that the Government being fully satisfied with the scheme submitted by the appellant, approved the same by an order dated 7.11.1984 and accorded approval for initiation of acquisition proceeding for the lands. On 17.3.1988 the Society entered into an agreement with the State Government agreeing to the conditions for acquisition, as required by Sections 39 and 40 of Part-VII of the Land Acquisition Act (hereinafter referred to as the 'Act'). But on 12.7.1988 a notification under Section 4(1) H

A of the Act was issued proposing to acquire lands for the Society to the extent of 133.33 acres in the aforesaid two villages, saying it was needed for public purpose.

B The writ petitioners-respondents questioned the validity of the aforesaid notification under Section 4(1) of the Act on several grounds including that the acquisition itself was not for public purpose. During the pendency of the writ application on 11.8.1989 the State Government issued declaration under Section 6(1) of the Act in respect of 99.01 acres of land in the aforesaid two villages for the appellant's society. On 19.3.1991 awards were made in respect of the aforesaid lands. However, on 18.6.1991 C the High Court allowed the writ application and quashed all steps taken in connection with acquisition thereof. According to the High Court, the acquisition was not for allotment to the bonafide members of the Society and as the Society had indulged in commercial venture for sales of sites, the acquisition of the lands under the provision of the Act was a colourable D exercise of the power. The High Court was also of the opinion that procedure adopted by the State Government for acquisition of lands for the Society was likely to defeat the schemes under Bangalore Development Authority Act.

E From the facts of the present case, it appears that on 19.9.1984 the appellant society submitted the housing scheme to the State Government. On 1.2.1985 the appellant society entered into an agreement with M/s. S.R. Constructions, respondent No. 11 in which the appellant society was described as first party and M/s. S.R. Constructions as Second party. The relevant parts whereof are as follows :-

F "2. WHEREAS THE FIRST PARTY is a registered House Building Co-operative Society under the Karnataka Co-operative Societies Act, its main object being to procure lands around Bangalore and forming layouts and sites to cater to the needs of its members by allotting sites for purposes of construction of dwelling houses on the sites and the Second Party is an Architects, G Engineers, Builders and Layout Contractors.

H 3. AND WHEREAS THE SECOND PARTY approached the First Party and offered to assist the First Party to secure lands in Thindlu and Chikkabettahally villages to the extent of 80 Acres approximately as specified in the annexures to this Agreement and

to get the lands acquired in favour of the First Party and further offered to take up the work of layout and formation of sites so formed through the B.D.A., and/or from any other competent authority. A

4. AND WHEREAS at on a representation from the FIRST PARTY the SECOND PARTY with his efforts has secured directions from Revenue Secretary, Government of Karnataka addressed to the Special D.C., Bangalore to issue Notification under Sec. 4(1) of Land Acquisition Act in favour of the First Party Society vide No. RD.257 AQB 84 dated 7.11.1984. B

The Second party shall secure to the First Party lands at Thindlu and Chikkabettahally to an extent of 80 acres as specified in the annexures to this agreement to begin with and such further extend as the First Party may require and shall arrange for agreements to be executed between the owners of such lands and the First Party within a period of 2-3 months from this day to facilitate the acquisition of lands in favour of the first Party. The Second Party hereby agrees strictly to conform and act according to the terms of this agreement. C D

The Second Party who has already entered into sale agreement with the owners of land (the details of the land fully described in the schedule to this agreement) has agreed to negotiate and ensure the acquisition of the land in favour of First Party. E

The First Party after inspection of the lands and discussions with the Second Party has agreed to have the lands from the owners acquired for the First Party subject to the other Services to be rendered by the Second Party as agreed to hereinafter. F

NOW THIS AGREEMENT spells out the terms and conditions, rights, powers, obligations and liabilities of the parties to this agreement. G

1. It is agreed that the Second Party shall carry out the following works for the First Party in respect of the lands to be acquired for the First Party.

2. It is agreed that in respect of the lands to be acquired for H

- A the First Party the Second Party shall undertake to do the following:
- (a) *To get Notification u/s 4(1) of the Land Acquisition Act issued for acquisition of the required extent of land mentioned in the annexure for the First Party in Thindlu and Chikkabettahally Villages, in one continuous plot and enter into necessary agreements with the owners of the land confirming that the lands are free from encumbrance and that there are no claims on the lands and that they have no objection for the acquisition proceedings in respect of the land;*
- B
- (b) *To get the Notification as required under Section 4(1) to be issued, within 3 months from the date of agreement with land owners ;*
- C
- (c) *To get the Enquiry as required under Section 5(1) of the Land Acquisition Act by proper authorities completed within 3-4 months from the date of agreement with land owners :*
- D
- (d) *To get the Notification as required u/s 6(1) of the Land Acquisition Act within 10 months from the date of the Agreement;*
- E
- (e) *To secure possession of the land from the land owners to the First Party after all the formalities of acquisition are completed and orders passed acquiring the lands for the first Party within 12 months from the date of the agreement;*
- F
- (f) *To get the layout plan approved and sanctioned and also permission to execute the civil portion of the layout work comprising of formation of roads, drains, culverts etc., by the B.D.A. within 2 months from the date of securing possession of lands;*
- G
- (g) *Executing the civil portion of the layout work comprising of formation of roads, drain, culverts etc., as specified by the B.D.A. according to the sanctioned plan, specifications and under supervision of the B.D.A. within 8 months of the sanction of layout plan and receipt of work order from the B.D.A. for the layout work;*
- H

- (h) Securing the permission from B.D.A. to execute the layout work under their supervision and the layout comprising of laying of water supplying, sewerage lines and chip carpeting which is agreed to be completed within 6 months after the completion of civil portion layout; A
- (i) Executing and doing all other acts, and things necessary for forming full fledged layout of residential building sites on the lands required complete in all respects, fit and ready for construction of houses on the completion of civil portion of lay out works; B
- (j) To get all the sites released from the B.D.A. or any other competent authority within 2 months of completion of layout works. C

3. The Second Party has agreed and undertaken to take up the above mentioned works and has agreed to carry out the works within 245 months time from the date of this agreement subject to any delay caused at the B.D.A. and other authorities in procuring the land, sanctioning or issuing layout plan and work order. D

4. The First Party agrees to pay to the Second Party an amount calculated at Rs. 112 per Sq. Yard based on the actual sital area (inclusive of the cost of the land acquired and the compensation payable thereto either under the award or any enhanced compensation under any proceedings, security fee and amounts payable to the B.D.A. towards supervision charges, chip carpeting, tree planting, maintenance etc., amount and sewerage mains within the layout amount payable to K.E.B. for electricity and the cost of layout to be deposited with B.D.A.) excluding the cost of the area to be left for roads, drains and the civic amenities according to the layout plan approved by B.D.A. E

..... (Emphasis supplied) F

In the schedule of the said agreement, the details of the lands, which have been acquired and which are subject matter of controversy, have been given. G

It further appears that agreements were also executed in favour of H

A the appellant society by the land holders, some of whom are writ petitioners
- respondents, agreeing to sell their lands to the appellant society or the
their nominee. In such agreements, the land holders said that the terms
and conditions of the agreement entered into between M/s S.R. Construc-
tions and the appellant society were totally agreeable to them including the
B terms of payment and time limit. They also agreed to receive the sale
consideration through M/s S.R. Constructions (respondent No. 11) and
admitted to have received advance on behalf of the appellant society from
M/s S.R. Constructions. They further agreed that if the Government intended
to acquire the land for the housing purpose of the appellant society,
they will agree to give consent to notifications under Sections 4(1) and 6(1)
C of the Act.

Before the High Court, on behalf of the writ petitioners, it was
pointed out that respondent No. 11, M/s S.R. Constructions had played
dubious role of a middle man. The said respondent entered into agreement
D with the land holders for sale of their lands by negotiation. At the same
time it entered into an agreement with the appellant society to get notifica-
tions under Sections 4(1) and 6(1) issued by the appropriate Government
acquiring those lands through the procedure prescribed under the Act. In
this process, the said respondent No. 11 has influenced the exercise of
statutory power by the appropriate Government, for the huge amount paid
E by the appellant society to the said respondent as consideration for the
same. In this background, according to the writ petitioners, it cannot be
held that the appropriate Government has exercised its own independent
discretion, that the lands in question were needed for any public purpose.
in other words, the exercise of the statutory power under Sections 4(1) and
F 6(1) of the Act is not based on objective considerations of the materials,
on the basis of which the appropriate Government could have formed an
opinion that the lands of the writ petitioners were required for public
purpose and because of that it was necessary to acquire the same.

G The High Court came to the conclusion, on this question :

"The agents of each of these societies had been paid heavy
amounts in consideration of which they were required to influence
the Government and to get the preliminary and the final notifica-
H tions acquiring large extent of lands, from the Government. The
decision of the Government to acquire the land was brought about

by the influence of such agents appointed to be "go betweens" and "carriers" between the Government and the society concerned and therefore such a decision is liable to be set aside on the ground that it is a case of colourable exercise of power and suffers from legal *mala fides*, in that, though the acquisition is stated to be for public purpose, in reality, the acquisition is substantially not for the purpose of *bona fide* housing schemes.

From the judgment of the High Court, it further appears that not only the acquisition of lands in favour of seven Housing Co-operative Societies, who were respondents to the different Writ Petitions, but also the acquisition of lands in favour of more than one hundred housing societies, which had sprung up within the Bangalore Metropolitan Planning Area became the matter of public debate and criticism. As a result of which a statutory enquiry under Section 64 of the Karnataka Co-operative Societies Act was directed by the Registrar of Co-operative Societies. The enquiry was held by Shri G.V.K. Rao, the Controller of Weights and Measures, who submitted his Report in respect of different housing societies including the appellant Society. The said Report was produced before the High Court. In the Report, it has been pointed out that most predominant irregularities committed by many of the Societies was in respect of admission of members. In many cases, the committees of management did not consider the applications for membership and there was no proper resolutions specifying the persons who were admitted as members of the society. There was no record on which date the said members were admitted by the different Housing Co-operative Societies. It was also said in the Report that the societies admitted persons, who were not eligible to become members. In respect of the appellant society, it was said in the Report, which has been referred to by the High Court in its judgment that membership was open to any person above 18 years of age and it left scope for admitting non-employees of HMT as members. From the scrutiny of the applications, it transpired that many who had been admitted as members, were neither employees of the HMT nor residents within the jurisdiction of the Society. It was also pointed out that the appellant had entered into an agreement with the Estate Agent S.R. Constructions and had paid a total amount of Rs. 92,52,938 to the said agent and Rs. 35 lakhs to special Land Acquisition Officer. The conclusion in respect of the appellant society in the Report is as follows :-

A "The Society has admitted large number of persons who are
neither employees of HMT nor residents of the jurisdiction of the
Society. All of them are to be removed from the rolls of the Society.
The society grants the membership without collecting the suffi-
B cient share amount and in many cases only the single share was
taken by the members, whereas it was necessary for members to
take atleast five shares. The committee solely responsible for these
irregularities. Secondly, the Society made huge advances to the
agents without commensurate amount of guarantee or security and
without any work being done by the agents. There is atleast Rs.
1.6 crores which has been advanced to the agents without any work.
C The committee in general and the Hon. Secretary of the Society
in particular is responsible for these irregularities".

Taking into consideration all the facts and the circumstances of the case
including the report of Mr. G.V.K. Rao, the High Court observed :

D "Before concluding, it is necessary to observe that as pointed
out in the report of G.V.K. Rao, it is on account of unlimited
territorial jurisdiction and vague provisions as to who could be-
come members and associate members and also as to what are the
rights of associate members, it has been possible for many of the
E societies to manipulate membership in such a way as to enroll all
those who are desirous of purchasing sites as also those who do
not possess the territorial or other qualification as members".

It was said that it was necessary that the Government should frame rules
for according previous approval for acquisition of lands for the housing
F co-operative societies *inter alia* prescribing the essential requirements of a
housing scheme and also prescribing the procedure for inquiry and report
to aid the Government to come to the conclusion as to whether the
previous approval should be given for any scheme prepared by any of the
house building societies which requires the Government to acquire any
G land for carrying out any such scheme.

By Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984)
several amendments have been introduced in the said Act including in the
definition "corporation owned or controlled by the State", "Company" and
"public purpose". The aforesaid amendments came into force with effect
H from 24.9.1984. Section 3(cc) defines the expression "corporation owned or

controlled by the State" :

"3(cc) - the expression "corporation owned or controlled by the State" means any body corporate established by or under a Central, Provincial or State Act, and includes a Government company as defined in Section 617 of the Companies Act, 1956, a society registered under the Societies Act, 1860, or under any corresponding law for the time being in force in a State, being a society established or administered by Government and a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, being a co-operative society in which not less than fifty- one per centum 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."

The expression 'Company' has been defined in Section 3(e) of the Act.

"3(e) - the expression "Company means -

- (i) a Company as defined in Section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc);
- (ii) a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc);
- (iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in clause (cc)."

The expression "public purpose" has been defined in Section 3(f) of the Act.

"3(f) - the expression "public purpose" includes -

- (i) the provision of village-sites, or the extension, planned

- A development or improvement of existing village-sites;
- (ii) the provision of land for town or rural planning;
- (iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;
- B (iv) the provision of land for a corporation owned or controlled by the State;
- C (v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by government, any local authority or a corporation owned or controlled by the State;
- D (vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;
- E (vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;
- F (viii) the provision of any premises or building for locating a public office,
- G

but does not include acquisition of land for Companies."

H There is no dispute that the Society with which we are concerned

shall not be covered by the expression "corporation owned or controlled by the State", because the said expression shall include a co-operative society, being a co-operative society in which not less than 51 per centum 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 Governments. A

The substituted definition of the expression "Company" in Section 3(a) (iii) will certainly include the appellant society. The substituted definition of the expression "Company" shall include co-operative society, within the meaning of any law relating to co-operative societies other than those referred to in clause (cc) of Section 3 of the Act. Such co-operative society shall be deemed to be a company, to which provisions of Chapter VII relating to acquisition of land for company shall be applicable. B C

In view of the substituted definition of the expression "public purpose", in Section 3(f)(vi), the provision for carrying out any housing scheme sponsored by the Government or by any authority established by Government for carrying out any such scheme shall be deemed to be a "public purpose". It further says that the provision of land for carrying out any housing scheme with prior approval of the State Government by a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, shall be deemed to be a "public purpose". As such for any housing co-operative society lands can be acquired by the appropriate Government, treating the same as acquisition for the public purpose. But, in that event, there has to be a prior approval of such scheme by the appropriate Government. When the lands are acquired for any co-operative society with prior approval of the scheme by the State Government, there is no question of application of the provisions of Part - VII of the Act. Such acquisition shall be on the mode of acquisition by the appropriate Government for any public purpose. D E F

If lands are acquired for any co-operative society treating it to be a company within the meaning of Section 3(e), then in view of Section 39 of the Act the provisions of Sections 6 to 16 and Sections 18 to 37 shall not be put in force unless there is previous consent of the appropriate Government, and the co-operative society has executed an agreement. The consent required under Section 39 of the Act has to be given by the appropriate Government only after the conditions mentioned in Section 40 are fulfilled. G H

A Sub-section (1) of Section 40, of the Act prescribes the conditions :

"40. *Previous enquiry.* -

B (1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under Section 5-A, sub-section (2), or by an enquiry held as hereinafter provided, -

C (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

D (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."

E In view of sub-section (1) of Section 40, before giving a consent, the appropriate Government has to be satisfied that the purpose of acquisition is for any of the purposes mentioned in clauses (a), (aa) and (b) of the said Section. Clause (a) clearly links the object of acquisition for the erection of dwelling houses for workmen employed by the Company or to provide
F amenities directly connected therewith. Clause (aa) requires that such acquisition is needed for the construction of some building or work for a Company which is engaged itself in any industry or work which is for a public purpose. Similarly, clause (b) also requires that acquisition should be for the construction of some work, which is likely to prove useful to the
G public. Section 44-A of the Act, is relevant :

H "44-A. *Restriction on transfer, etc.* - No Company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government."

In view of Section 44-A, no company/co-operative society for which the land has been acquired under the said Part - VII shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government. It need not be pointed out that the framers of the Act have put several conditions and restrictions in respect of acquisition of land for a company/co-operative society if the lands are acquired under Part - VII of the Act.

Now the question which is to be answered is as to whether in view of the definition of "public purpose" introduced by the aforesaid amending Act 68 of 1984 in Section 3(f)(vi), is it open to the appropriate Government to acquire land for co-operative society for housing scheme without making proper enquiry about the members of the Society and without putting such housing co-operative society to term in respect of nature of construction, the area to be allotted to the members and restrictions on transfer thereof?

According to us, in Section 3(f)(vi) the expression "housing" has been used along with educational and health schemes. As such the housing scheme contemplated by Section 3(f)(vi) shall be such housing scheme which shall serve the maximum number of members of the society. Such housing scheme should prove to be useful to the public. That is why the Parliament while introducing a new definition of "public purpose", said that any scheme submitted by any co-operative society relating to housing, must receive prior approval of the appropriate Government and then only the acquisition of the land for such scheme can be held to be for public purpose. If requirement of Section 3(f)(vi) is not strictly enforced, every housing co-operative society shall approach the appropriate Government for acquisition by applying Section 3(f)(vi) instead of pursuing the acquisition under Part VII of the Act which has become more rigorous and restrictive. In this background, it has to be held that the prior approval, required by Section 3(f)(vi), of the appropriate Government is not just a formality; it is a condition precedent to the exercise of the power of acquisition by the appropriate Government for a housing scheme of a co-operative society.

In the present case, a hybrid procedure appears to have been followed. Initially, the appellant society through M/s. S.R. Constructions purported to acquire the lands by negotiation and sale by the land holders.

- A Then from terms of the agreement dated 17.3.1988, it appears that the procedure prescribed in Part - VII was to be followed and the lands were to be acquired at the cost of the appellant society treating it to be a "company". The allegation made on behalf of the appellant society that the housing scheme had been approved by the appropriate Government on 7.11.1984 shall not be deemed to be a prior approval within the meaning of Section 3(f)(vi) but an order giving previous consent as required by Section 39 of Part - VII of the Act. In the agreement dated 17.3.1988 it has been specifically stated "And whereas the Government having caused inquiry to be made in conformity with the provisions of the said Act and being satisfied as a result of such inquiry that the acquisition of the said
- B land is needed for the purpose referred to above *has consented to the provisions of the said Act being in force in order to acquire the said land for the benefit of the society members to enter in the agreement hereinafter contained with the Government*". [emphasis supplied] But, ultimately, the lands have been acquired on behalf of the appropriate Government treating the requirement of the appellant society as for a public purpose within
- C the meaning of Section 3(f)(vi). It is surprising as to how respondent M/s S.R. Constructions entered into agreement with the appellant society assuring it that the lands, details of which were given in the agreement itself, shall be acquired by the State Government by following the procedure of Sections 4(1) and 6(1) and for this, more than one crore of rupees was paid
- D to M/s S.R. Constructions (respondent No. 11).
- E

Mr. G. Ramaswami, learned senior counsel appearing on behalf of the appellant, submitted that merely because the appellant society had entered into an agreement with respondent No. 11. M/s S.R. Constructions in which the latter for the consideration paid to it had assured that the lands in question shall be acquired by the State Government, no adverse inference should be drawn because that may amount to a tall claim made on behalf of M/s S.R. Constructions in the agreement. He pointed out that the notifications under Sections 4(1) and 6(1) have been issued beyond the time stipulated in the agreement and as such, it should be held that the

F State Government has exercised its statutory power for acquisition of the lands in normal course, only after taking all facts and circumstances into consideration. There is no dispute that in terms of agreement dated 1.2.1985 payments have been made by the appellant society to M/s S.R. Constructions. This circumstance alone goes a long way to support the

G contention of the writ petitioners that their lands have not been acquired

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in normal course or for any public purpose. In spite of the repeated query, the learned counsel appearing for the appellant society could not point out or produce any order of the State Government under Section 3(f)(vi) of the Act granting prior approval and prescribing conditions and restrictions in respect of the use of the lands which are to be acquired for a public purpose. There is no restriction or bar on the part of the appellant society on carving out the size of the plots or the manner of allotment or in respect of construction over the same. That is why the framers of the Act have required the appropriate Government to grant prior approval of any housing scheme presented by any co-operative society before the lands are acquired treating such requirement and acquisition for public purpose. It is incumbent on part of the appropriate government while granting approval to examine different aspects of the matter so that it may serve the public interest and not the interest of few who can as well afford to acquire such lands by negotiation in open market. According to us, the State Government has not granted the prior approval in terms of Section 3(f)(vi) of the Act to the housing scheme in question. The power under Section 4(1) and 6(1) of the Act has been exercised for extraneous consideration and at the instance of the persons, who had no role in the decision making process - whether the acquisition of the lands in question shall be for a public purpose. This itself is enough to vitiate the whole acquisition proceeding and render the same as invalid.

In the present case there has been contravention of Section 3(f)(vi) of the Act inasmuch as there was no prior approval of the State Government as required by the said Section before steps for acquisition of the lands were taken. The report of Shri G.K.V. Rao points out as to how the appellant society admitted large number of persons as members who cannot be held to be genuine members, the sole object being to transfer the lands acquired for 'public purpose', to outsiders as part of commercial venture, undertaken by the office bearer of the appellant society. We are in agreement with the finding of the High Court that the statutory notifications issued under Sections 4(1) and 6(1) of the Act have been issued due to the role played by M/s S.R. Constructions, respondent No. 11. On the materials on record, High Court was justified in coming to the conclusion that the proceedings for acquisition of the lands had not been initiated because the State Government was satisfied about the existence of the public purpose but at the instance of agent who had collected more than a crore of rupees for getting the lands acquired by the State Government.

A The appeals are accordingly dismissed. But in the circumstances of the case there shall be no orders as to costs.

B We direct that as a result of quashing of the land acquisition proceedings including the notifications as aforesaid, the possession of the lands shall be restored to the respective land owners irrespective of the fact whether they had challenged the acquisition of their lands or not. On restoration of the possession to the land owners they shall refund the amounts received by them as compensation or otherwise in respect of their lands. The appellant, the respondents and the State Government including all concerned authorities/persons shall implement the aforesaid directions at an early date.

C The connected Appeal Nos. 3011-19 of 1995 (arising out of S.L.P. (C) Nos. 11482-90 of 1991) *H.M.T. House Building Co-op. Society v. Syed Khadar & Ors.*, have already been disposed of by a reasoned judgment. The reasons given for dismissing the said appeals are equally applicable in the facts and circumstances of the present case. Accordingly, these special leave petitions filed on behalf of the same. House Building Co-operative Society are dismissed. No. Costs.

D In the appeals Nos. 3011-19/95 arising out of SLP (C) Nos. 11482-90 of 1991, after the dismissal of the appeals a direction has been given that as a result of the quashing of the land acquisition proceedings including the notifications in question, the possession of the land shall be restored to the respective land owners irrespective of the fact whether they had challenged the acquisition of their lands or not. A further direction has been given that on restoration of the possession to the land owners, they shall refund the amounts received by them as compensation or otherwise in respect of their lands. We issue a similar direction even in this case. The petitioner, the respondents and the State Government including all concerned authorities/persons shall implement the aforesaid directions at an early date.

E **F** **G** *SPECIAL LEAVE PETITION (C) NOS. 12104-07, 12600-03, 13150-80, 18297-300 OF 1991.*

H Lands on basis of the notifications issued under Sections 4(1) and 6(1) of the Land Acquisition Act, had been acquired for the petitioner-House Building Society, treating the said acquisition to be for a public

purpose. No order of the State Government as required by Section 3(f)(vi) granting prior approval for acquisition of the lands in question for the housing scheme of the petitioner-society has been produced. The petitioner society had also entered into an agreement with the contractor more or less on the same terms and conditions as was in the case of H.M.T. House Building Co-operative Society, assuring that the lands in question shall be acquired on basis of the notification issued by the State Government under Sections 4(1) and 6(1) of the Act. The High Court in its impugned judgment has given details of the allegations made against the petitioner society regarding collection of huge amounts from different applicants for site who were not even members of the society and how the society had entered into an agreement with agents, who with their influence have got the lands acquired. The High Court has also referred to an advertisement issued by the petitioner society inviting persons who want to have mansions in the city of Bangalore. It also gave the name and address of a representative at Dubai. On basis of the aforesaid materials, the High Court has come to the conclusion that the Society itself was not a *bona fide* House Building Society. The High Court has also recorded a finding that the notifications under Sections 4(1) and 6(1) of the Act had been issued at the instance of the agents appointed by the petitioner society, to whom huge amounts had been paid for influencing the Government to issue the aforesaid notifications. Mr. Ramaswamy, appearing for the petitioner society purported to distinguish this case on facts from the case of H.M.T. House Building Co-operative Society. But according to us, the facts of the present case are similar to the case of H.M.T. House Building Co-operative Society and there is no scope to interfere with the order of the High Court, quashing the notifications under Sections 4(1) and 6(1). Accordingly, the special leave petitions filed on behalf of the petitioner society are dismissed. No costs.

In the appeals arising out of SLP (C) Nos. 11482-90 of 1991, after the dismissal of the appeals a direction has been given that as a result of the quashing of the land acquisition proceedings including the notifications in question, the possession of the land shall be restored to the respective land owners irrespective of the fact whether they had challenged the acquisition of their lands or not. A further direction has been given that on restoration of the possession to the land owners, they shall refund the amounts received by them as compensation or otherwise in respect of their

A lands. We issue a similar direction even in this case. The petitioner, the respondents and the State Government including all concerned authorities/persons shall implement the aforesaid directions at an early date.

B *SPECIAL LEAVE PETITION (C) NOS. 13114 AND 13339 OF 1991.*

C These special leave petitions have been filed on behalf of the petitioner Amarjyothi House Building Co-operative Society Ltd. for setting aside the judgment of the High Court, quashing the notification under Sections 4(1) and 6(1) of the Land Acquisition Act, acquiring lands for the petitioner society. From the judgment of the High Court, it appears that this society also had entered into an agreement with a developer who had assured to get the lands in question acquired in accordance with the provisions of the Act. Petitioner society paid huge amount to the said developer for the said object. In this case also there is no order of the State D Government, granting prior approval for acquisition of the lands in question, as required by Section 3(f)(vi) of the Act. The High Court has also referred to the Report of Mr. G.V.K. Rao, about the bogus members. According to the finding, the Society had admitted 4,050 bogus members. As such, there is no scope for taking a view contrary one which we have E taken while disposing of the appeals Nos. 3011-19/95 (arising out of S.L.P. (C) Nos. 11482-90 of 1991) filed on behalf of the H.M.T. House Building Co-operative Society. These special leave petitions are accordingly dismissed. No costs.

F In the appeals Nos. 3011-19/95 arising out of SLP (C) Nos. 11482-90 of 1991, after the dismissal of the appeals a direction has been given that as a result of the quashing of the land acquisition proceedings including the notifications in question, the possession of the land shall be restored to the respective land owners irrespective of the fact whether they had challenged the acquisition of their lands or not. A further direction has G been given that on restoration of the possession to the land owners, they shall refund the amount received by them as compensation or otherwise in respect of their lands. We issue a similar direction even in this case. The petitioner, the respondents and the State Government including all concerned authorities/persons shall implement the aforesaid directions at an H early date.

SPECIAL LEAVE PETITION (C) NOS. 12032-37 OF 1991.

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These special leave petitions have been filed for setting aside the judgment of the High Court, quashing the notifications under Sections 4(1) and 6(1) of the Land Acquisition Act, on the ground that the said notifications had been issued at the instance of the agents, appointed by the petitioner society. The High Court has also referred to the agreement entered into by the petitioner and the said middle-man, who had undertaken to get the lands in question acquired. The agent had undertaken in the agreement to manage all concerned "at all levels". No order granting prior approval by the State Government for the acquisition of the lands, as required by Section 3(f)(vi) of the Act has been produced. According to us, the facts of the present case are no way different from that of the H.M.T. House Building Co-operative Society, which has been disposed of by a reasoned judgment. That judgment fully covers the present special leave petitions also. Accordingly, the special leave petitions are dismissed. No costs.

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In the appeals Nos. 3011-19/95 arising out of SLP (C) Nos. 11482-90 of 1991, after the dismissal of the appeals a direction has been given that as a result of the quashing of the land acquisition proceedings including the notifications in question, the possession of the land shall be restored to the respective land owners irrespective of the fact whether they had challenged the acquisition of their lands or not. A further direction has been given that on that on restoration of the possession to the land owners, they shall refund the amounts received by them as compensation or otherwise in respect of their lands. We issue a similar direction even in this case. The petitioner, the respondents and the State Government including all concerned authorities/persons shall implement the aforesaid directions at an early date.

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SPECIAL LEAVE PETITION (C) NOS. 12535-37 OF 1991.

These special leave petitions have been filed against the judgment of the High Court, quashing the notifications under Sections 4(1) and 6(1) of the Land Acquisition Act, on the ground that the notifications had been issued at the instance of the agent, appointed by the petitioner society. The learned counsel, appearing for the petitioner, could not point out as to how the facts of the present case are different from the facts of the H.M.T.

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A House Building Society, so far this aspect is concerned. He has, however, pointed out that in the present case, an order had been issued by the State Government granting prior approval. In this connection, reference was made to an order dated 9.8.1984 by which it is said that the Government had granted prior approval for the acquisition of the lands in question.

B According to us, an order dated 9.8.1984 cannot be an order under Section 3(f)(vi) because the definition of 'public purpose' which was introduced by Act 68 of 1984 came in force with effect from 24.9.1984. As such there was no occasion for the State Government to exercise power under Section 3(f)(vi) on 9.8.1984. Any such order must be in terms of Section, 39 read with Section 40 of Part VII of the Act, which part is applicable when

C acquisition of land is made for companies. It is surprising as to how the present House Building Co-op. Society was being treated even as a company on 9.8.1984, because the new definition of company was also introduced in Section 3(e) with effect from 24.9.1984. Accordingly, there is not merit in these special leave petitions, which are dismissed. No costs.

D In the appeals Nos. 3011-19/95 arising out of SLP (C) Nos. 11482-90 of 1991, after the dismissal of the appeals a direction has been given that as a result of the quashing of the land acquisition proceedings including the notifications in question, the possession of the land shall be restored to the respective land owners irrespective of the fact whether they had

E challenged the acquisition of their lands or not. A further direction has been given that on restoration of the possession to the land owners, they shall refund the amount received by them as compensation or otherwise in respect of their lands. We issue a similar direction even in this case. The petitioner, the respondents and the State Government including all concerned authorities/persons shall implement the aforesaid directions at an

F early date.

SPECIAL LEAVE PETITION (C) NO. 5824-5920 OF 1985.

G The special leave petition has been filed on behalf of the State of Karnataka against the same judgment of the High Court, quashing the notifications under Sections 4(1) and 6(1) of the Land Acquisition Act, acquiring lands for different House Building Co-operative Societies. The State of Karnataka has purported to justify the issuance of those notifications. Whether the lands in question had been acquired in accordance with

H law has been examined in detail in the case of H.M.T. House Building

Co-operative Society. In view of the reasons given in the said judgment, the special leave petition has to be dismissed. The application for condonation of delay in filing the special leave petition is also dismissed. No cost.

In the appeals Nos. 3011-19/95 arising out of SLP (C) Nos. 11482-90 of 1991, after the dismissal of the appeals a direction has been given that as a result of the quashing of the land acquisition proceedings including the notifications in question, the possession of the land shall be restored to the respective land owners irrespective of the fact whether they had challenged the acquisition of their lands or not. A further direction has been given that on restoration of the possession to the land owners, they shall refund the amounts received by them as compensation or otherwise in respect of their lands. We issue a similar direction even in this case. The petitioners and the respondents including all concerned authorities/persons shall implement the aforesaid directions at an early date.

SLP (C) No.s 12530-34/91 & 13189/91

Leave granted.

On behalf of the appellant society, it was pointed out that in these cases, the appellant society had not entered into any agreement with any agent or contractor as had been done in other cases referred to above. It was also pointed out that some of the land holders in the present case had filed writ applications, which had been dismissed by the High Court. Special Leave Petitions against the order of the High Court have also been dismissed by this Court. It was urged that in this background the High Court should not have quashed the notifications under Sections 4(1) and 6(1) of the Land Acquisition Act, so far the acquisition for the appellant society is concerned. The stand taken on behalf of the appellants, in these appeals was not challenged on behalf of the respondents. The special feature of the present case as already pointed out above is that the appellant society had not entered into any agreement with any agent or contractor to get the lands acquired. It was not stated that there was no prior approval of the appropriate Government to the scheme in question. According to us, the facts of the present case are different from the others, which have been disposed of by this Court. Accordingly, the appeals are allowed and the judgment of the High Court so far it relates to the appellant society, is set aside. No costs.

V.M.

Appeals allowed.