A STATE OF MAHARASHTRA & ORS.

v.

RELIANCE INDUSTRIES LTD. & ORS.

(Civil Appeal No. 1699 of 2007)

B SEPTEMBER 15, 2017

[ARUN MISHRA AND MOHAN M. SHANTANAGOUDAR, JJ.]

Land Acquisition Act, 1894:

C *ss. 3(a) and 49 – Acquisition of part of building – Without acquiring land underneath such building – When the ownership of the land lies with the Government – Permissibility – Held: Definition of 'land' under s. 3(a) is of wide connotation – The definition includes benefits arising out of land and things attached to the earth or* D *permanently fastened to anything attached to the earth – Since the owner of the building is different from the owner of the land, and if portion of that building is required for public purpose, it is open to the State to acquire that portion of building u/s.49 – Only the interest belonging to the owner has to be acquired – Government itself being the owner of the land, is not required to acquire the land – It was* E *required only to acquire the private interest (in the building) – Such acquisition would not amount to overreach of the State's power of* eminent domain *or violation of Art. 300A of the Constitution – Constitution of India – Art. 300A.*

Interpretation of Statutes:

F *Rules of interpretation – Interpretation must depend on the text and context – A statute is best interpreted when one knows why it was enacted – The Act must be looked at as a whole and discovered, what each Section, each clause, each phrase and each word was meant and designed to say as to fit into the Scheme of the* G *entire Act – No part or word of statute can be construed in isolation.*

Words and Phrases:

Word 'includes' – Meaning of, in the context of s. 3(a) of Land Acquisition Act, 1894.

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Allowing the appeal, the Court A

HELD: 1. The definition of land is of wide connotation. It cannot be construed in narrow sense to render provisions of the Land Acquisition Act, 1894 otiose or impracticable. The definition of "land" u/s. 3(a) of Land Acquisition Act is inclusive and it includes benefits arising out of land, and things attached to the B **earth or permanently fastened to anything attached to the earth. Provisions of Section 49 of the Act make it clear besides the inclusive definition under Section 3(a), that there can be acquisition of part of building or house and owner has the option to express his desire that the whole of it should be acquired and** C **not the part, as the case may be. The court has the power to decide on a question being referred under the second proviso, whether land proposed to be taken forms part of the house, manufactory or building. The court has to take into consideration the question whether land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory** D **or building. If the court holds otherwise, obviously the possession of the land shall not be taken. There can be acquisition of the house or building or manufactory under the provisions of Section 49(1) or acquisition of part. It is not a case where any of the owners of the building has desired that whole of building be acquired. In case such intention would have been expressed, it would have** E **been incumbent to acquire the whole of the building. [Paras 12, 16 and 19] [342-F, G-H; 344-E-G; 349-B]**

Municipal Corporation of Greater Bombay & Ors. v. Indian Oil Corporation Ltd. **(1991) Supp. 2 SCC 18: [1990] 3 Suppl. SCR 365;** *P. Rami Reddy & Ors. v. State of Andhra Pradesh & Ors.* **(1988) 3 SCC 433: [1988] 1 Suppl. SCR 443;** *Mrinalini Roy & Ors. v. State of West Bengal & Ors.* **1975 (1) CLJ 57 – relied on.** F

2.1 The definition of land in section 3(a) is inclusive. It has to be seen in the context of each and every provision in the Act G **to find out as to the meaning to be given to the inclusive definition. By the interpretation given to the word 'land', there is no question of taking away very meaning of the land but the acquisition of the right in the land can only be with respect to the right of the**

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A owner. Obviously, only the interest belonging to the owner has to be acquired and as per Section 49 of the Act, there can be acquisition of the part of the house, building or manufactory. Once option has not been exercised by the owner by insisting that whole of the building be acquired, it would be only of the interest which is existing in the part of building, house or manufactory. [Paras B 20, 25] [349-B-C; 354-E-G]

C.I.T. Andhra Pradesh v. M/s. Taj Mahal Hotel, Secunderabad (1971) 3 SCC 550; *S.K. Gupta & Ors. v. K.P. Jain & Anr.* (1979) 3 SCC 54 : [1979] 2 SCR 1184; *P. Kasilingam & Ors. v. P.S.G. College of* C *Technology & Ors.* (1995) Supp. 2 SCC 348 : [1995] 2 SCR 1061 – relied on.

Jagir Singh v. State of Bihar (1976) 2 SCC 942 : [1976] 2 SCR 809; *Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd. & Ors.* (1987) 1 SCC D 424 : [1987] 2 SCR 1 – held inapplicable.

2.2 Interpretation must depend upon the text and the context. They are the basis of interpretation. If the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the E textual interpretation match the contextual. A statute is best interpreted when one knows why it was enacted. If the statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different F than the statute is looked at without glasses provided by the context. The Act must be looked at as a whole and should be discovered what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute or word of a statute can be construed in isolation. [Para 27] [355-B-D]

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2.3 The Land Acquisition Act, 1894 was enacted since the Act of 1870 was found entirely ineffective for the protection either of the persons interested in lands taken up or of the public purse. The object of the Land Acquisition Act, 1894 was to amend the then existing law for acquisition of law for public purpose and to H determine the adequate amount of compensation to be paid on

account of such acquisition. The word 'includes' has been interpreted by looking at the definition as a whole in the scheme of the entire Land Acquisition Act and by reference to what preceded the enactment and the reasons for it. [Paras 28, 29] 355-E-F] A

2.4 The word 'include' is opposite to the word 'exclude'. If the interpretation as suggested by the respondents is accepted, then the definition of the land could not become an inclusive definition but the definition of "land" excludes certain factors. The expression 'land' includes benefits arising out of the land and things attached to the earth or permanently fastened to anything attached to the earth. The portion of the building cannot survive independent of the building and the building without the land. The word "land" should be understood having been covered by the elongated definition since it defines with inclusiveness that part of the building. [Para 29] [355-F-H] B C

2.5 In the present case, owner of the land is the State whereas the owner of the building is a respondent. Since, building cannot stand without the land, the building also becomes part of the land. However, since the owner of the building is different from the owner of the land, and if a portion of the building is required for public purpose, it is open for the State to acquire that portion of the building by paying adequate compensation in respect of that portion of the building, as well as, in respect of proportionate diminution of the user, if any of the land, under Section 23 of the Land Acquisition Act, 1894, in accordance with law. [Para 30] [356-B-C] D E F

3. The object of the Act is to compensate the owner adequately. The purpose of the Act is to make additions for the public purpose and to award to the owners/ interested persons compensation in accordance with the provisions of the Act. The acquisition has been made for the public purpose in the instant case. When flats can be sold independently, obviously they can be acquired also. As all the rights in the floor are being acquired and the land beneath it need not be acquired more so it belongs to the Government, there can be valid acquisition of such floors independently without land in such cases. [Para 33] [360-E-F; 361-A] G H

A *Girnar Traders v. State of Maharashtra*, **2011 (3) SCC 1 : [2011] 3 SCR 1;** *T. L. Prakash Ram Rao v. The District Collector, Ananthapur & Ors.* **(1993) 2 AP LJ 421 (HC) – distinguished.**

4.1 The instant matters are of dual ownership. In both the B **cases owners of the building are not the owners of the land. The land belongs to State of Maharashtra or Port Trust. In such a situation where the Government is the owner of the site, obviously Government could not have acquired the land and in the case of its own ownership, there was no necessity for the acquisition of land. [Para 34] [361-C]**

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Hari Chand & Ors. v. Secretary of State **AIR (1939) PC 235 – relied on.**

R. Umraomal & Ors. v. State of Tamil Nadu & Anr. **AIR 1986 Mad. 63 – approved.**

D **4.2 When the Government was having interest in the land and acquires a land under the provisions of the Land Acquisition Act, the Government acquires the sum total of private interests subsisting in them. If the Government has itself an interest in the land it is only to acquire other interest outstanding therein,** E **the Government interest cannot be acquired under the Act though an investigation can be made of such interest, but that would not make the subject of acquisition. [Para 41] [367-E-F]**

Collector of Bombay v. Nusserwanji Rattanji Mistri and Ors. **AIR 1955 SC 298 : [1955] SCR 1311;** *Special* F *Land Acquisition Officer and Rehabilitation Officer, Sagar v. M.S. Seshagiri Rao & Anr.* **AIR 1968 SC 1045 – relied on.**

Secretary of State v. Allahabad Bank Ltd. **AIR 1939 All, 34;** *Raja Shyam Chunder Mardraj & Ors. v. The* G *Secretary of State for India in Council* **(1907-08) 12 CWN 569;** *Dasarath Sahu & Ors. v. Secy. of State* **AIR 1916 Pat. 330 (1);** *Makhan Lal & Ors. v. Secy. of State* **AIR 1934 All. 260 – overruled.**

5. If the ownership of the land with owner of the building and owner has required by expressing desire that the whole of H

the building with land be acquired. Only then Section 49 of the Act would not empower the acquisition of any building or part thereof *de hors* the underlying land. The land upon which the building is standing need not be acquired and there is no necessity to acquire it. There can be acquisition of part of the building or the house or manufactory as the owners have not exercised their option to insist for acquisition for whole of the building as such only the rights which they have in the particular floors are being acquired. Under proviso to Section 49(1) there can be acquisition of land beside the part of the building, house or manufactory and when the land is proposed to be taken, the dispute as to whether it does or does not form part of the house, manufactory or building, the Collector shall refer the determination of such question to the Court. Where part of building that too a multi-storied building is being acquired, the land need not be acquired more so when the owner of building is not the owner of land and his entire interest in part of building can be acquired. [Paras 44, 49] [373-A-D; 382-G]

State of Bihar & Anr. v. Kundan Singh & Anr. **AIR 1964 SC 350 : [1964] SCR 382;** *S.P. Jain v. Krishna Mohan Gupta & Ors.* **(1987) 1 SCC 191 : [1987] 1 SCR 411– relied on.**

Jagannath Ganeshram Agrawal & Anr. v. State of Maharashtra & Anr. **AIR 1986 Bom. 241 – approved.**

Saramma Itticheriya v. State of Kerala & Ors. **AIR 2008 Ker 72 – distinguished.**

Harsook Das Bal Kishan Das v First Land Acquisition Collector **(1975) 2 SCC 256 : [1975] Suppl. SCR 79 – referred to.**

6.1 Article 300A of the Constitution of India interdict taking of the property for a public purpose without compensating the owner for its loss. In case entire ownership of the land does not lie with the owner, only the right which is capable of being acquired would be acquired not something which is non-existent. The building or part can be acquired and there is no question of acquisition of the land in such cases. In adjudication of the compensation as per the provisions of Section 23, the State is not depriving the respondents of their property. There is

A acquisition of land by fair procedure along with reasonable compensation. The action has been taken by the State in accordance with law. The action is legally justified. Thus, there is no question of eminent domain being misused or violation of provisions of Article 300A. [Para 52] [383-F-H]

B 6.2 It is also not correct to say that owner of the land is deprived of his ownership rights over the land when the State purports to acquire only a building or portion thereof standing on his land, without acquiring the underlying land. The respondents are not the owner of the underlying land. Secondly, the acquisition of a particular floor as per the provision of section 49 of the Act is C permissible and the entire interest of owner in a particular portion has been acquired for that he would be compensated. It is not the case of partial acquisition of the interest on a particular floor. When without selling the land, in a building, a particular floor can be sold why there could not be acquisition of particular floor for D public purpose. [Para 53] [384-A-C]

6.3 The owner has the right to use and enjoy a particular portion but owner cannot set up a plea for acquisition of an interest when he does not have that particular right or interest or title. His right to manage it, right to decide, how it shall be used, right E to income from it has to be in accordance with the law. Right of individual has to give way to the public purpose on being duly compensated by way of fair procedure. [Para 54] [384-H; 385-A]

7. The entire interest of the owner has to be acquired and that has been precisely done in the instant case. When land and F building once married becomes one unit, neither land nor building can thereafter be valued separately. But this would not come in the way of determining the valuation of a particular floor, all the aspects of the owners interest and the bundle of other rights can be taken into consideration including support provided by the land and value of the land in the locality etc. Value of the part of G the building can also be accordingly assessed. [Paras 57, 58] [386-F-G; 388-H; 389-A-B]

State of Kerala v. P.P. Hassan Koya AIR 1968 SC 1201 : [1968] SCR 459 – relied on.

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State of Bihar v. Kameshwar Prasad **1952 SCR 889; *Trishala Jain & Anr. v. State of Uttaranchal & Anr.* [2011] 8 SCR 520; *Kiran Tandon v. Allahabad Development Authority* (2004) 10 SCC 74 – referred to.**

Salmond on Jurisprudence, **(12th ed.1966) at pp. 246-247, 413 – referred to.**

Case Law Reference

[1990] 3 Suppl. SCR 365	relied on	Para 17
[1988] 1 Suppl. SCR 443	relied on	Para 18
1975 (1) CLJ 57	relied on	Para 19
(1971) 3 SCC 550	relied on	Para 20
[1979] 2 SCR 1184	relied on	Para 21
[1995] 2 SCR 1061	relied on	Para 22
[1976] 2 SCR 809	held inapplicable	Para 23
[1987] 2 SCR 1	held inapplicable	Para 23
[2011] 3 SCR 1	distinguished	Para 31
(1993) 2 AP LJ 421 (HC)	distinguished	Para 32
AIR (1939) PC 235	relied on	Para 34
AIR 1986 Mad. 63	approved	Para 35
AIR 1939 All. 34	overruled	Para 36
(1907-08) 12 CWN 569	overruled	Para 37
AIR 1916 Pat. 330 (1)	overruled	Para 38
AIR 1934 All. 260	overruled	Para 39
[1955] SCR 1311	relied on	Para 41
AIR 1968 SC 1045	relied on	Para 42
[1964] SCR 382	relied on	Para 45
AIR 1986 Bom. 241	approved	Para 46
[1987] 1 SCR 411	relied on	Para 46
[1975] Suppl. SCR 79	referred to	Para 47
AIR 2008 Ker 72	distinguished	Para 47
[1952] SCR 889	referred to	Para 50
[2011] 8 SCR 520	referred to	Para 51

A	**[1968] SCR 459**	**relied on**	**Para 57**
	(2004) 10 SCC 74	**referred to**	**Para 58**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1699 of2007

B From the Judgment and Order dated 10.03.2006 of the High Court of Judicature at Bombay in Writ Petition Nos. 1956 of 1994 and W. P. No. 1384 of 1997.

Dr. Kylasanatha Pillai, Nishant Ramakantrao Katneshwarkar, Ms. Deepa Kulkarni, Arpit Rai, Advs. for the Appellants.

C Basava Prabhu S. Patil, K. V. Vishwanathan, Sr. Advs., Kumar Anurag Singh, Hasan Murtaza, Alok Kumar, Kumar Shivam, Rajesh Kumar, Ms. Amrita Sarkar, Ms. Nidhi Agrawal, Ashok Mathur, Advs. for the Respondents.

The Judgment of the Court was delivered by

D **ARUN MISHRA, J.** 1. The State of Maharashtra has come up in appeal against the common judgment dated 10.3.2006 passed by the High Court in two writ petitions being W.P. No.1956/1994 filed by Reliance Industries Ltd. & another and W.P. No.1384/1997 filed by Express Newspapers and another against State of Maharashtra and E others. In both the cases, part of the building had been sought to be acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). In both the cases the owners of building do not own the land. In Express Newspapers the land belongs to the Government and in the case of Reliance Industries, the ownership of the land is with the Port Trust. The question which arises for F consideration is whether, under the Act, acquisition of part of the building can be made without acquiring land underneath to such building. The High Court has quashed the acquisition, sans the land, as unsustainable.

2. In W.P. No.1956 of 1994, the premises admeasuring 1478 sq. mts. on the third floor of the building *i.e.* "Reliance Centre" at 19, G Walchand Hirachand Marg, Ballard Estate, Bombay is the premises. The Controller of Accommodation had requisitioned the said accommodation under the provisions of section 6(4)(a) of the Bombay Land Requisition Act, 1948 (hereinafter referred to as "the Requisition Act"). It had been allotted for use and occupation by Anti Corruption Bureau, Prohibition and Intelligence Bureau of the Government of H

Maharashtra and was also partly occupied by Deputy Controller of Rationing, Region-A, Department of Civil Supplies. A

3. W.P. No.1679 of 1991 was filed by Reliance Industries Ltd. challenging the requisition order dated 23.1.1970 in view of the judgment of this Court, disapproving withholding of requisitioned property for an unreasonable period of time. B

4. The State Government issued a notification under section 4 of the Act to acquire the entire third floor premises admeasuring 167.50 sq. mtrs. in the building. Notice was issued for the purpose of an inquiry under section 5A on 28.12.1992 that was served on 02.01.1993. In pending writ petition an amendment application was filed to incorporate the challenge to the land acquisition proceedings. However, on objections being filed, the writ petition was disposed of with liberty to challenge the acquisition proceedings independently. Declaration under section 6 was issued on 23.6.1994. Notice under section 9 of the Act was issued on 29.7.1994 which was served on 2.8.1994. Thereafter, Reliance Industries Ltd. filed fresh writ application out of which the present appeal arises. C D

5. In W.P. No.1384 of 1997, the respondent – Express Newspapers – is the lessee of the land owned by the Government. The building is known as "Express Building" at Plot No.18, Block No.1, Back Bay Reclamation, Bombay. The Governor of Bombay had granted the registered lease on 13.3.1956. The second floor comprised in 4500 sq.ft. was sought to be acquired. E

6. Earlier vide order dated 25.9.1968 the said floor of Express Newspapers building was requisitioned for use of State Government and was allotted to the 5th appellant, i.e., Controller of Rationing, Food & Civil Supplies Department. Since the requisitioning continued for an unduly long period, Express Newspapers Ltd. filed W.P. No.2269/1992. During the pendency of the same, the State Government initiated the acquisition proceedings by issuing a notification under section 4 with respect to the second-floor premises admeasuring about 325.15 sq.mtrs. needed for Food & Civil Supplies Department to accommodate the office of the Controller of Rationing, Food & Civil Supplies. Notice under section 9 of the Act was issued. Thereafter, declaration issued under section 6 of the Act was withdrawn. Subsequently, a fresh notification under section 4 was issued on 28.7.1996 in relation to the vacant premises of second floor admeasuring 345.18 sq.mtrs. Objections were filed, an inquiry under F G H

A section 5A of the Act was held, followed by a declaration under section 6 which came to be issued on 17.4.1997 and notice under section 9 on 23.7.1997. Thereupon, writ petition had been preferred out of which the appeal arises.

7. The High Court has held that without acquisition of land, part
B of the building could not be acquired. The definition of 'building' in section 3(a) of the Act is an inclusive one. The land would include all benefits arising out of land for the purpose of acquisition as well as things attached to the earth or permanently fastened to anything attached to the earth. In other words, the High Court has held all the structures or the trees or any material attached or fastened to the land to be acquired, would also
C be the subject matter of acquisition along with such land. But under the provisions of the Act without the land to which the things are attached or permanently fastened, such things by themselves and singularly cannot be the subject matter of acquisition. Though the term 'include' would suggest the definition of "Land" to be exhaustive and extensive, an
D interpretation of the term has to be in the context of and cannot be in isolation. The acquisition under the Act cannot be merely of the benefits out of or the things attached or permanently fastened to the land without acquiring the land itself. The High Court has further held that a part of the house or building which can be acquired in the absence of objection in that regard by the owner, would necessarily include the land underneath
E or appurtenant to such part of the house or building. Merely because there is dual ownership, it would not mean that acquisition proceedings under the said Act could be of limited interest in the land.

8. Against the judgment and order passed by the High Court, the appeals have been preferred by the State of Maharashtra, this Court
F has directed maintenance of *status quo*. Application for subsequent events has also been filed indicating that efforts have been made to get the premises vacated and to withdraw the acquisition proceedings. However, acquisition has not been withdrawn so far. In our opinion, it is of no consequence, as acquisition cannot be withdrawn.

G 9. Learned counsel appearing for the appellants has submitted that under the Act a part of the building can be acquired without acquiring the land on which the building has been built. The true purport and meaning of the expression 'land' has not been correctly appreciated by the High Court. It was submitted that part of the building without the land on
H which the building is built, is covered by the expression 'land' as defined

under the Act. Learned counsel has further submitted that the definition is inclusive definition. It has not been correctly interpreted by the High Court. Same is of wide amplitude. When the Government or the Port Trust owns the land and only a part of the building was required, its acquisition could have been made without acquisition of the land. It was not necessary for the Government to acquire its own land. Section 49 of the Act contemplates the acquisition of not only of a house or building but also a part of house or building. The concept of dual ownership is well settled. There is no reason why building itself or part thereof belonging to an independent owner cannot be acquired. There are very many things that can be acquired under the Act without acquiring the land such as fisheries etc. Government has to acquire what it is capable of acquiring and not something more that was required to be acquired. Under section 16 of the Act, property acquired vests with the Government free from all encumbrances. The term 'encumbrance' means a claim, lien or liability attached to the property. The persons who are holders of such encumbrance are entitled to compensation.

10. It was submitted on behalf of the respondents that definition of the 'Land' under section 3(a) of the Act, is inclusive but it does not define the land to mean "benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth". It was vehemently urged that the inclusive definition couldn't take away the ordinary meaning of 'land'. The definition only provides for what it additionally includes. It was further submitted that the object of the Land Acquisition Act provides the context in which expression 'land' is to be interpreted. The Act contemplates the acquisition of the land in the ordinary sense of the term and a mere building without the underlying land cannot be acquired under the Act. It was further submitted that section 49 of the Act does not empower the acquisition of any building or a part thereof *de hors* the underlying land. For that reliance has been placed upon the second proviso to section 49(1). It was also urged by learned senior counsel appearing for the respondents that acquisition of a building or a part thereof without acquiring the underlying land would be an overreach of State's power of eminent domain. The State has an obligation to compensate the owner for his land. This restriction on State's power is inherent in the doctrine of eminent domain. It was also contended that owner of the land is deprived of his ownership rights over his land when the State purports to acquire only a building or part thereof, standing on his land without acquiring the underlying land. The owner has the

A right to possess the thing which he owns. He also has a right to use or enjoy the thing owned. Other's right of ownership also coincides if the building is compulsorily acquired. No person would want to buy the underlying land from the owner. Thus, the owner of the land would be deprived of his right to obtain a fair income or value of the land upon alienations. Thus, upon acquisition of a building, State also deprives the B landowner of the right in his land. By not acquiring the land the State would be avoiding its obligation to compensate the owner for its land. Interpretation of section 3(a) of the Act has to be consistent with the limitation on the State's power of eminent domain interpreted in Article 300A of the Constitution of India.

C 11. Following questions arise for our consideration:

I. Meaning of land under section 3(a) of the Act.

II. Interpretation of term 'includes'.

III. Object and scheme of Act.

D IV. Whether State to acquire its own land underneath building or other interest ?

V. Acquisition of part of building without land under section 49 of the Act.

E VI. Violation of Article 300A by acquisition in part.

VII. Whether valuation method of building mandates acquiring of land?

I. In Re : Meaning of land under section 3(a) of the Act

F 12. It is necessary to consider definition of 'land'. Section 3(a) of the Act defines the expression 'land' which is extracted hereunder:

> "3. Definitions. - In this Act, unless there is something repugnant in the subject or context, -
>
> (a) the expression "land" includes benefits to arise out of land, G and things attached to the earth or permanently fastened to anything attached to the earth"

The definition of "land" is inclusive and it includes benefits arising out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

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13. When we consider the scheme of the Act, section 4 provides that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house without giving notice in writing for the purpose of preliminary investigation when the land is required for public purpose.

14. Section 49 of the Act deals with the acquisition of part of house or building. The provision is extracted hereunder:

> "**49. Acquisition of part of house or building**. - (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired:
>
> Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not be take possession of such land until after the question has been determined.
>
> In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken, is reasonably require for the full and unimpaired use of the house, manufactory or building.
>
> (2) If, in the case of any claim under section 23, sub-section (1), thirdly, by a person interested, on account of the severing of the land to be acquired from his other land, the [appropriate Government] is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.
>
> (3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the [appropriate Government] to the person interested, and shall thereafter proceed to make his award under section 11."

A 15. The provision contained in section 49 makes it clear that there can be acquisition of part of house or building but if the owner thereof desires that whole of his house or manufactory or building shall be so acquired, the provisions can not be used for the purpose of acquiring a part only of any house, manufactory or other building and when a part is proposed to be acquired, owner has right to object that the whole building B or house should be acquired and not the part, and the owner at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify, his expressed desire that the whole of such house, manufactory or building shall be so acquired. Second proviso makes it clear that if any question arises whether any land proposed to C be taken under the Act does or does not form part of a house, manufactory or building within the meaning of section 49(1), the Collector shall refer the determination of such question to the court and shall not take possession of it until after the question has been determined, and the court while deciding such a question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, D manufactory or building.

16. In our opinion, provisions of section 49 of the Act make it clear besides the inclusive definition under section 3(a), that there can be acquisition of part of building or house and owner has the option to express his desire that the whole of it should be acquired and not the E part, as the case may be. The court has the power to decide on a question being referred under the second proviso, whether land proposed to be taken forms part of the house, manufactory or building. The court has to take into consideration the question whether land proposed to be taken is reasonably required for the full and unimpaired use of the house, F manufactory or building. If the court holds otherwise, obviously the possession of the land shall not be taken. There can be acquisition of the house or building or manufactory under the provisions of section 49(1) or acquisition of part. It is not a case where any of the owners of the building has desired that whole of building be acquired. In case such intention would have been expressed, it would have been incumbent to G acquire the whole of the building.

17. In *Municipal Corporation of Greater Bombay & Ors. v. Indian Oil Corporation Ltd.* (1991) Supp. 2 SCC 18 this court had considered the definition of "land" which is an inclusive definition and has observed that its accompaniments are land which is being built upon H

or is built upon or covered with water; benefits to arise out of land; things attached to the earth, This Court has held thus:

> "26 The question then is whether it is a land? Indisputably the definition of 'land' also is of an inclusive definition. Its accompaniments are land which is being built upon or is built upon or covered with water; benefits to arise out of land; things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street. The question is whether the tank is attached to the earth? In Stroud's Judicial Dictionary (5th edn. Vol. 1) relied on by the learned counsel for the appellant, the word 'attached' has been defined at page 217 thus:
>
> > "This word does not always mean physically fastened; it may also mean, superincumbent upon. Thus, in citing the judgment of Cockburn, C.J., *Laing v. Bishopswearmouth*, that whatever is 'attached' to premises has to be estimated for the purpose of ascertaining its rating value."

18. The meaning of "land" has also been considered by this Court in *P. Rami Reddy & Ors. v. State of Andhra Pradesh & Ors.* (1988) 3 SCC 433. This Court has discussed the question that arose in the context of the meaning of the expression 'land' in paragraph 5(2)(a) of the Fifth Schedule to the Constitution and section 3(1) of the Schedule to A.P. Scheduled Area Land Transfer Regulation, 1959. This Court has laid down thus:

> "21 Another argument which did not succeed in the High Court has been hopefully persisted with in this Court. The expression "Land" has been used in its restricted sense in para 5(2)(a) of the Fifth Schedule and therefore the impugned provisions prohibiting the transfer of lands along with structures thereon by employing the expression "immovable property" is not in accordance with law. Such is the argument. This argument is devoid of merit for two reasons: Firstly, there is no reason to believe that "land" has not been employed in its legal sense. The expression "land" in its legal sense is a comprehensive expression which is wide enough to include structures, if any, raised thereon. While this proposition hardly needs to be buttressed, support can be sought from the following sources:

A The Dictionary of English Law [1959 edn., Vol. 2, p.1053 by Earl Jowitt]

LAND, in its restrained sense, means soil, but in its legal acceptation it is a generic term, comprehending every species of ground, soil or earth, whatsoever, as meadows, pastures, woods, B moors, waters, marshes, furze, and heath; it includes also houses, mills, castles, and other buildings; for with the conveyance of the land, the structures upon it pass also. And besides an indefinite extent upwards, it extends downwards to the globe's centre, hence the maxim, *Cujus est solum ejus est usque ad coelum et ad inferos*; or, more curtly expressed, *Cujus est solum ejus est* C *altum* (Co. Litt. 4-a).

Words and Phrases Judicially Defined (By Roland Burrows- Vol. III, 1944 edn., p.206)

The word "land" would be variously understood by different D persons. To a farmer the word "land" would not mean his farm buildings; to a lawyer the word would include everything that was upon the land fixed immovable upon it. *Smith v. Richmond* per Lord Halsbury, L.C., at p. 448.

The Law Lexicon

E The word "land" is a comprehensive term, including standing trees, buildings, fences, stones, and waters, as well as the earth we stand on. Standing trees must be regarded as part and parcel of the land in which they are rooted and from which they draw their support.

F 22. Secondly, to interpret the expression "land" in its narrow sense is to render the benevolent provisions impotent and ineffective. In that event the prohibition can be easily circumvented by just raising a farmhouse or a structure on the land. The impugned provisions were inserted by the Amending Regulation precisely to plug such loopholes and make the law G really effective. The High Court was perfectly justified in repelling this meritless plea. It is therefore not possible to accede to this submission."

(Emphasis supplied)

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19. A Division Bench of the High Court of Calcutta considered in *Mrinalini Roy & Ors. v. State of West Bengal & Ors.* 1975 (1) CLJ 57 question whether the acquisition of fishery for the purpose of reclamation of Southern Salt Lake area was valid or not. It upheld acquisition. The Court held that fishery is included in the definition of the land. Aforesaid matter travelled to this Court in *Mrinalini Roy Ratna Prova Mondal & Ors. v. State of West Bengal & Ors.* (1997) 9 SCC 113, this court considered the expression 'land' under the Act thus;

> "2. It is not necessary to narrate all the facts in these cases. Suffice it to state that notification under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") was published on 14-5-1956 for reclamation of the fisheries in the lands comprising cadastral plots enumerated in the notification, of an extent admeasuring more or less 8760.53 acres. Declaration under Section 6 was published on 5-1-1971 declaring that the land for the reclamation of the Southern Salt Lake area was published. We are concerned presently to an extent of 1495.93 acres only. It was contended in the High Court and also repeated by Dr S. Ghosh, learned Senior Counsel, that the "land", as defined under Section 3(a) does not include fisheries; that is made explicit by the West Bengal Amendment Act, 1981 bringing fishery within the ambit of the word "land". It would indicate that the authorities have understood that the Act does not apply to acquisition of the fisheries rights and, therefore, the acquisition was without authority of law. In support thereof, Dr Ghosh placed reliance on the judgment of the Division Bench of the Calcutta High Court in *Pasupati Roy v. State of W.B.* [AIR 1974 Cal 99] and *State of W.B. v. Suburban Agriculture Dairy & Fisheries (P) Ltd.* [1993 Supp (4) SCC 674] (SCC paras 6, 13, 14 and 16) and in *State of W.B. v. Shebaits of Iswar Sri Saradia Thakurani* [AIR 1971 SC 2097] (AIR at p. 2098, para 3). We find it difficult to give acceptance to the contentions of the learned counsel. The expression "land" includes benefits to arise out of land and, things attached to the earth or permanently fastened to anything attached to the earth. Tank fisheries cannot survive independent of the tank and there cannot be a tank without the land. Therefore, the expression "land" is required to be understood in that perspective when the tank fisheries are sought to be acquired.

A Tank fisheries thereby would be a benefit to arise out of the land. Thereby the word "land" should be understood to have been covered by the elongated definition since it defines with inclusiveness that the tank fisheries is a benefit to arise out of land.

B 4. It is true that a memo was filed on behalf of the Fisheries Department and it was reiterated in the counter-affidavit filed in the High Court that the land acquired would be used to rehabilitate some of the displaced fishermen to eke out the livelihood in reclamation tank fisheries. The above statement is not inconsistent with the public purpose which became conclusive C under Section 6(3). As seen, while reclaiming the tank fisheries for the public purpose, some of the displaced fishermen on the other lakes are sought to be rehabilitated in the lake in question by enabling them to catch the fish to earn livelihood. It would, therefore, be not inconsistent with the declaration conclusiveness D of which has been attached by operation of sub-section (3) of Section 6 which is also consistent with Section 114(h) of the Evidence Act, 1872. It is true that prior to the Amendment Act, 1981 tank fisheries were not expressly brought within the definition of land. In 1981, with a view to avoid any further litigation on the interpretation in that behalf, the legislature expressly brought E within the ambit of the land tank fisheries or fisheries. That does not mean that it would not be capable of interpretation to bring within the ambit of a benefit to arise out of the land. The Division Bench judgments of the Calcutta High Court relied upon by Dr Ghosh have not correctly laid down the law. In *Suburban* F *Agriculture Dairy* (supra) and *Saradia Thakurani* (supra) cases that question did not squarely arise. That was a case under the West Bengal Estates Acquisition Act, 1954 (1 of 1954). The definition of "land" expressly mentions that the tank fisheries are included within the definition of "estate" but vis-à-vis the rights attached therein, option has been given to the intermediary G within a specified time for its retention. Therefore, the intermediary, if he had exercised the option after the notification abolishing the estates concerned within the specified time, then the tank fisheries stand excluded from vesting. That principle has no application to the facts in this case. Accordingly, we hold H that the tank fisheries are the land and the acquisition was for a

public purpose. We do not find any illegality warranting interference with the Division Bench judgment." A

(Emphasis supplied)

The definition of land is of wide connotation. It cannot be construed in narrow sense to render provisions of the Act otiose or impracticable. B

II. In Re : Interpretation of term 'includes'

20. The definition of land in section 3(a) is inclusive. What meaning is to be given to term 'include' for that reliance has been placed on *C.I.T., Andhra Pradesh v. M/s. Taj Mahal Hotel, Secunderabad* (1971) 3 SCC 550. The purport of interpretation of the expression "includes" has to be in the context of the Act. This Court has held thus: C

> "6. Now it is well settled that where the definition of a word has not been given, it must be construed in its popular sense if it is a word of every day use. Popular sense means "that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it". In the present case, Section 10(5) enlarges the definition of the word "plant" by including in it the words which have already been mentioned before. The very fact that even books have been included shows that the meaning intended to be given to "plant" is wide. The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. The word "include" is also suspectible of other constructions which it is unnecessary to go into." D E F

21. The purport of inclusive definition has also been considered by this Court in *S.K. Gupta & Anr. v. K.P. Jain & Anr.* (1979) 3 SCC 54, thus; G

> "24. The noticeable feature of this definition is that it is an inclusive definition and, where in a definition clause, the word "include" is used, it is so done in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used, these words or phrases must be construed as H

A comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include (see *Dilworth v. Commissioner of Stamps* (1899) AC 99). Where in a definition section of a statute a word is defined to mean a certain thing, wherever that word is used in that statute, it shall mean what is B stated in the definitions unless the context otherwise requires. But where the definition is an inclusive definition, the word not only bears its ordinary, popular and natural sense whenever that would be applicable but it also bears its extended statutory meaning. At any rate, such expansive definition should be so C construed as not cutting down the enacting provisions of an Act unless the phrase is absolutely clear in having opposite effect (see *Jobbins v. Middlesex County Council*, (1948) 2 All ER 610). Where the definition of an expression in a definition clause is preceded by the words "unless the context otherwise requires", normally the definition given in the section should be applied and D given effect to but this normal rule may, however, be departed from if there be something in the context to show that the definition should not be applied (see Khanna, J., in *Indira Nehru Gandhi v. Raj Narain*, (1975) Supp SCC 1). It would thus appear that ordinarily one has to adhere to the definition and if it is an E expansive definition the same should be adhered to. The frame of any definition more often than not is capable of being made flexible but the precision and certainty in law requires that it should not be made loose and kept tight as far as possible (see *Kalya Singh v. Genda Lal*, (1976) 1 SCC 304)."

F 22. This Court has considered the purport of inclusive definition in *P. Kasilingam & Ors. v. P.S.G. College of Technology & Ors.* (1995) Supp. 2 SCC 348 thus;

"19. We will first deal with the contention urged by Shri Rao based on the provisions of the Act and the Rules. It is no doubt G true that in view of clause (3) of Section 1 the Act applies to all private colleges. The expression 'college' is, however, not defined in the Act. The expression "private college" is defined in clause (8) of Section 2 which can, in the absence of any indication of a contrary intention, cover all colleges including professional and technical colleges. An indication about such an intention is,

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however, given in the Rules wherein the expression 'college' has been defined in Rule 2(b) to mean and include Arts and Science College, Teachers' Training College, Physical Education College, Oriental College, School of Institute of Social Work and Music College. While enumerating the various types of colleges in Rule 2(b) the rule-making authority has deliberately refrained from including professional and technical colleges in the said definition. It has been urged that in Rule 2(b) the expression "means and includes" has been used which indicates that the definition is inclusive in nature and also covers categories which are not expressly mentioned therein. We are unable to agree. A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression that is put down in definition". (See : *Gough v. Gough*, (1891) 2 QB 665; *Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court* [1990 (3) SCC 682, at p.717]. The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See : Dilworth v. Commissioner of Stamps (1899 AC 99 at pp. 105-106) (Lord Watson); *Mahalakshmi Oil Mills v. State of A.P.* (1989 1 SCC 164, at p. 169). The use of the words "means and includes" in Rule 2(b) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time. As noticed earlier the Grants-in-

A B C D E F G H

A Aid Code contains provisions which, in many respects, cover the same field as is covered by the Act and the Rules. The Director of Technical Education has been entrusted with the functions of proper implementation of those provisions. There is nothing to show that the said arrangement was not working satisfactorily so as to be replaced by the system sought to be introduced by the Act and the Rules. Rule 2(d), on the other hand, gives an indication that there was no intention to disturb the existing arrangement regarding private engineering colleges because in that rule the expression 'Director' is defined to mean the Director of Collegiate Education. The Director of Technical Education is not included in the said definition indicating that the institutions which are under the control of Directorate of College Education only are to be covered by the Act and the Rules and technical educational institutions in the State of Tamil Nadu which are controlled by the Director of Technical Education are not so covered.

20. The Rules have been made in exercise of the power conferred by Section 53 of the Act. Under Section 54(2) of the Act every rule made under the Act is required to be placed on the table of both Houses of the Legislature as soon as possible after it is made. It is accepted principle of statutory construction that "rules made under a statute are a legitimate aid to construction of the statute as *contemporanea expositio*" (See : Craies on Statute Law, 7th Edn., pp. 157-158; *Tata Engineering and Locomotive Co. Ltd. v. Gram Panchayat, Pimpri Waghere 1977 (1) SCR 306, at p. 317*). Rule 2(b) and Rule 2(d) defining the expression 'College' and 'Director' can, therefore, be taken into consideration as *Contemporanea Expositio* for construing the expression "private college" in Section 2(8) of the Act. Moreover, the Act and the Rules form part of a composite scheme. Many of the provisions of the Act can be put into operation only after the relevant provision or form is prescribed in the Rules. In the absence of the Rules the Act cannot be enforced. If it is held that Rules do not apply to technical educational institutions the provisions of the Act cannot be enforced in respect of such institutions. There is, therefore, no escape from the conclusion that professional and technical educational institutions are excluded from the ambit of the Act and the High Court has rightly

taken the said view. Since we agree with the view of the High Court that professional and technical educational institutions are not covered by the Act and the Rules, we do not consider it necessary to go into the question whether the provisions of the Act fall within the ambit of Entry 25 of List III and do not relate to Entry 66 of List I." A B

23. It was also submitted that definition of land means land in the ordinary sense. Therefore, the definition only provides for what it additionally includes. Learned Counsel for the respondent has relied upon *Jagir Singh v. State of Bihar* (1976) 2 SCC 942, thus :

"21. The definition of the term "owner" is exhaustive and intended to extend the meaning of the term by including within its sweep bailee of a public carrier vehicle or any manager acting on behalf of the owner. The intention of the legislature to extend the meaning of the term by the definition given by it will be frustrated if what is intended to be inclusive is interpreted to exclude the actual owner. C D

b. *Black Diamond Beverages v. CTO*, (1998) 1 SCC 458 at page 461

7. It is clear that the definition of "sale price" in Section 2(d) uses the words "means" and "includes". The first part of the definition defines the meaning of the word "sale price" and must, in our view, be given its ordinary popular or natural meaning. The interpretation thereof is in no way controlled or affected by the second part which "includes" certain other things in the definition. This is a well-settled principle of construction. Craies on Statute Law 7th Edn. 1.214) says: E F

"An interpretation clause which extends the meaning of a word does not take away its ordinary meaning.... Lord Selborne said in Robinson v. Barton-Eccles Local Board [(1883) 8 AC 798 : 53 LJ Ch 226] AC at p. 801:

'An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that would be properly applicable but to enable the word as used in the Act ... to be applied to something to which it would not ordinarily be an applicable.'" G

(Emphasis supplied) H

A Reliance has also been placed in this regard on *Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd. & Ors.* (1987) 1 SCC 424.

24. In *Jagir Singh v. State of Bihar* (supra) this Court has considered the definition of owner. This Court has observed that the B legislative intent to be frustrated if interpreted to exclude the intent of the actual owner. There is no dispute with the aforesaid proposition, however, the definition of the land is inclusive and does not exclude actual owner. In case the State is found to be the owner of the land, it cannot be deprived of acquisition of the structure standing thereon. That the interpretation made by us is not to exclude the owner but the purposive C interpretation fulfils and recognizes concept of the dual ownership which has become common in the present day context. Moreover, the interest in part of the entire house, building or manufactory can be acquired. The building ultimately forms part of the land and things attached to the earth and permanently fastened to anything attached to the earth and D the benefits to arise out of the land.

25. In *Reserve Bank of India* (supra) this court has laid down that when legislatures resort to inclusive definition *i.e.* to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words depending on the context by process of E enlarging the definition may even become exhaustive. In our opinion, it has to be seen in the context of each and every provision in the Act to find out as to the meaning to be given to the inclusive definition. There is no dispute with the proposition laid down in the aforesaid decisions. By the interpretation made by us, there is no question of taking away very meaning of the land but the acquisition of the right in the land can F only be with respect to the right of the owner. Obviously, only the interest belonging to the owner has to be acquired and as per Section 49 of the Act, there can be acquisition of the part of the house, building or manufactory. Once option has not been exercised by the owner by insisting that whole of the building be acquired, it would be only of the G interest which is existing in the part of building, house or manufactory. The decision in *Reserve Bank of India* (supra) also fails to sub-serve the cause espoused by the respondents.

26. In *Reserve Bank of India* (supra), this Court has clarified that the Legislatures resort to include the definitions (a) to enlarge the H meaning of words or phrases so as to take in the ordinary, popular and

natural sense of the words and also the sense which the statute wishes to attribute to it, (b) to include meanings about which there may be some dispute, or (c) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending upon the context, in the process of enlarging, the definition may even become exhaustive.

27. Interpretation must depend upon the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. If the statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than the statute is looked at without glasses provided by the context. We must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire act. No part of a statute or word of a statute can be construed in isolation.

28. The Land Acquisition Act, 1894 was enacted since the Act of 1870 was found entirely ineffective for the protection either of the persons interested in lands taken up or of the public purse. The object of the Land Acquisition Act, 1894 was to amend the then existing law for acquisition of law for public purpose and to determine the adequate amount of compensation to be paid on account of such acquisition.

29. By looking at the definition as a whole in the scheme of the entire Land Acquisition Act and by reference to what preceded the enactment and the reasons for it, we have interpreted the word 'includes'. The word 'include' is opposite to the word 'exclude'. If the interpretation as suggested by the learned counsel for the respondents is accepted, then the definition of the land could not become an inclusive definition but the definition of "land" excludes certain factors. The expression 'land' includes benefits arising out of the land and things attached to the earth or permanently fastened to anything attached to the earth. The portion of the building cannot survive independent of the building and the building without the land. The word "land" should be understood having been covered by the elongated definition since it defines with inclusiveness that part of the building.

A 30. Having regard to the true intent of the meaning of the word 'land', the only interpretation possible in the context is the interpretation as made by us, inasmuch as such interpretation will not take away the very meaning of the land. In the matter on hand, owner of the land is the State whereas the owner of the building is a respondent. Since, building cannot stand without the land, the building also becomes part of the land. B However, since the owner of the building is different from the owner of the land, and if a portion of the building is required for public purpose, it is open for the State to acquire that portion of the building by paying adequate compensation in respect of that portion of the building, as well as, in respect of proportionate diminution of the user if any of the land C under Section 23 of the Land Acquisition Act, 1894, in accordance with law.

III. In Re : Object and Scheme of the Act

31. It was further submitted on behalf of the respondents that to consider the context of definition of land the object and scheme of the D Act has to be taken into consideration. Reliance has been placed on *Girnar Traders v. State of Maharashtra*, 2011 (3) SCC 1.

> "55. The Land Acquisition Act was enacted as it was considered expedient to amend the law for acquisition of land needed for public purposes and for companies and particularly for payment E and determination of the amount of compensation to be paid on account of such acquisition. The Land Acquisition Act, 1870 made it obligatory for the Collector, to refer the matter to civil courts for a decision in cases of difference of opinion with interested person(s) as to value of the land as well as cases in which one of F the claimants was absent, was the Collector was not empowered to make an award ex-parte even after notice. This requirement resulted in a lot of litigation, delay and expenses. According to the Statement of Objects and Reasons of the Land Acquisition Act the Act of 1870 had not, in practice, been found entirely effective for the protection either of the persons interested in G lands taken up or of the public purpose. Thus, the law was amended by making the Collector's award final unless altered by a decree. The persons interested in the land thus still have the opportunity, if they desire, to prefer to an authority, quite independent of the Collector, their claims for more substantial

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compensation than what the Collector has awarded. Procedure for determining the valuation of land was also proposed to be suitably changed.

56. Major amendments were proposed by Central Act 68 of 1984 to the Land Acquisition Act. The Statement of Objects and Reasons for this amending Bill posited that due to enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialisation, building of institutions, etc. has become far more numerous than ever before. Acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individuals and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for larger interest of the community. The pendency of acquisition proceedings for long periods often caused hardship to the affected parties and rendered unrealistic, the scale of compensation offered to them.

57. With this background the legislature felt that it was necessary to restructure the legislative framework for acquisition of land so that it is more adequately governed by the objective of serving the interests of the community in harmony with the rights of the individuals. Recommendations on similar lines were also made by the Law Commission and while considering these proposals for amendment, the legislature carried out various amendments of significance in the existing Land Acquisition Act.

58. Besides enlarging the definition of "public purpose", provision was also made for acquisition of land for non-governmental companies. Further, it provided the time-limit for completion of all formalities between issue of preliminary notification under Section 4(1) and declaration under Section 6(1) of the Land Acquisition Act. Section 11-A of the Land Acquisition Act was introduced which provided for time-limit of two years, from the date of publication of declaration under Section 6 of the Central Act, within which the Collector should make its award under that Act. Provision was also made for taking of possession of

A land by the Collector before the award is made in urgent cases.

59. From the objects and reasons of the Land Acquisition Act it is clear that the primary object of this Act is acquisition of land for a public purpose which may be "planned development" or even otherwise. In fact the provisions of the Land Acquisition
B Act do not deal with the concept of development as is intended under the specific statutes like the MRTP Act, the Delhi Development Act, 1957, the Bangalore Development Authority Act, 1976 (for short "the Bangalore Act"), etc. The primary purpose of the Land Acquisition Act is to acquire land for public
C purpose and for companies as well as to award compensation to the owners/interested persons in accordance with the provisions of this Act.

60. The acquisition proceedings commence with issuance of a notification under Section 4 of the Land Acquisition Act against which the interested persons are entitled to file objections which
D will be heard by the competent authority in accordance with the provisions of Section 5-A leading to issuance of declaration under Section 6 of the Land Acquisition Act. After complying with the requirements of Section 9 of the Land Acquisition Act, the Collector is expected to make an award under Section 11 of the
E Central Act and in terms of Section 11-A of the Land Acquisition Act, if the award is not made within two years from the date of publication of the declaration the acquisition proceedings shall lapse.

64. As is evident from the afore-narrated provisions the primary
F purpose and the only object of the Land Acquisition Act is acquisition of land and payment of compensation for such acquisition. It is not an Act dealing in extenso or otherwise with development and planning. The scheme of this Act is very simple. Despite the fact that it is compulsory acquisition which is in exercise of the State's power of eminent domain the legislature
G has still attempted to create a balance between compulsory acquisition on the one hand and rights of owner/interested person in land on the other. The acquisition proceedings are commenced with issuance of a notification under Section 4 of the Land

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Acquisition Act for a public purpose and would end with the payment of compensation for such acquired land. The mechanism provided under this Act is entirely relatable to the process of acquisition of land and payment of compensation.

66. The Land Acquisition Act itself is a self-contained code within the framework of its limited purpose i.e. acquisition of land. It provides for complete machine for acquisition of land including the process of execution, payment of compensation as well as legal remedies in case of any grievances."

32. The respondents for the proposition that acquisition of land is dominant purpose of Act as such land has to be necessarily acquired under the Act have relied upon *T.L. Prakash Ram Rao v. The District Collector, Ananthapur & Ors.*, (1993) 2 AP LJ 421 (HC) at page 422 in which the Andhra Pradesh High Court has laid down thus:

"2. ....Under the provisions of the Land Acquisition Act the dominant purpose is acquisition of land and that land may be vacant may contain structures may contain trees and may also contain wells. The Act never contemplates of acquisition of a well for the purpose of drawing water as a dominant purpose. To say that in acquiring the water source land also is involved, and as such the Act is applicable will be simply misreading the provisions of the Act and particularly the definition of 'land' thereunder. Section 3(a) of the Act defines 'land' as including benefits arise out of land and things attached to the earth or permanent fastened to anything attached to the earth. The definition of land employed therein is similar to that of the words 'immovable property' in the General Clauses Act 1897. May be that the definition of land is not exhaustive but is inclusive definition but by stretching any far it cannot be deduced that the dominant purpose need not be acquisition of land. Stretching the definition of land to an extent what is inevitable is the acquisition of land that should be a dominant purpose and consequentially the things attached to the said land be it buildings trees crops or wells can also be part of acquisition. But if the dominant purpose is only to acquire a water source and then to notify the land involving the same the said acquisition does not amount to acquisition of land and the Act is not at all applicable. It is clear

A from the stand taken by Navodaya School — the 3rd respondent herein, which is beneficiary of the acquisition in the affidavit filed by it in support of the implead petition that the land is sought to be acquired for providing water source to the Navodaya School. The public purpose under the Act can be for providing land, be it vacant or with structures, trees or borewells, for certainly not to the extent of grabbing somebody's water source and for that purpose mention the land surrounding the said borewell as a necessary consequence. Indisputably, the requisitioning authority does not require the land for any public purpose; but they need water to cater to the needs of the students, staff and other workers of Navodaya School and as the water did not strike in the premises of the Navodaya School and rich water struck in the land of the petitioner, the said water source is sought to be acquired. As the Land Acquisition Act does not permit this kind of acquisition the petitioner cannot be deprived of his property and if it is done the same will be in infraction of constitutional guarantee under Article 300-A of the Constitution of India."

33. In our opinion, the submission with respect to object and scheme as discussed in *Girnar Traders* (supra) and *T. L. Prakash Ram Rao* (supra) does not come in the way of acquisition. The object is to compensate the owner adequately. There is no doubt that pendency of acquisition proceedings are not to cause hardship to the affected parties. The purpose of the Act is to make additions for the public purpose and to award to the owners/ interested persons compensation in accordance with the provisions of the Act. The acquisition has been made for the public purpose in the instant case. The decision in the case of *T.L. Prakash Ram Rao* (supra) does not come in the way of acquisition. The court has observed that definition of the land is not exhaustive, but is inclusive definition; but by stretching any far it cannot be deduced that the dominant purpose need not be acquisition of land and the things attached to the said land can also be part of the acquisition. But if the dominant purpose is only to acquire a water source and then to notify the land involving the same, the said acquisition does not amount to acquisition of land and the Act is not at all applicable. That situation was totally different from the instant case as the entire floors are being acquired for the purpose of housing of the offices and there is acute paucity of such spaces particularly in Mumbai and nearby places. When

flats can be sold independently, obviously they can be acquired also. As all the rights in the floor are being acquired and the land beneath it need not be acquired more so it belongs to the Government there can be valid acquisition of such floors independently without land in such cases.

IV. In Re : Whether State to acquire its own land underneath the buildings or other interest ?

34. The instant matters are of dual ownership. In both the cases owners of the building are not the owners of the land. The land belongs to State of Maharashtra or Port Trust. In such a situation where the Government is the owner of the site, obviously Government could not have acquired the land and in the case of its own ownership, there was no necessity for the acquisition of land. The Privy Council has considered the precise question in *Hari Chand & Ors. v. Secretary of State* AIR (1939) PC 235 at page 236. In the said case a notification was issued which was served upon the proprietors of bungalows in which it was set out that the Government claimed to be the owner of the land upon which various bungalows and outhouses were erected. They were desirous of acquiring the building thereon under the Act. An objection was raised that the notification was bad because it was not a notification for acquisition of land but a notification with intention for acquiring building on the land. As such the proceedings under the Land Acquisition Act were fundamentally bad because the notification upon which the proceedings started was invalid. The Privy Council has held that when the Government was the owner of the site, building on the land could have been acquired. The Privy Council in *Hari Chand* (supra) considered the submissions urged during the compensation proceedings with respect to acquisition of building and not the land. It observed :

> "..... Accordingly a notification was served on each of the proprietors of the bungalows, and in the recital of each notification it is set out that the Government claimed to be the owners of the land upon which the various bungalows and outhouses had been erected. That is set out as a matter of narrative in the notification. Then it proceeds to state that the Government have given notice that the land has been resumed by them and that they are desirous now of acquiring the buildings thereon and any other outstanding interest therein, and for that purpose they invoke the provisions of the Land Acquisition Act of 1894.

A The first point taken here has been that the notification was bad because it was not a notification for the acquisition of the land, but a notification of an intention to acquire only buildings on the land. It was said that the Land Acquisition Act only authorized notification of an intention to acquire land and therefore that the whole proceedings under the Land Acquisition Act were B fundamentally bad because the notification upon which the proceedings started was invalid. It has to be noticed however that in the Land Acquisition Act the expression 'land' includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

C In the present case the Government's position being that they were the owners of the site, it would have been manifestly idle for them to have proposed to acquire what was already their own, and therefore when they sought to put in force the provisions of the Land Acquisition Act they naturally requisitioned what D was not their own but what they desired to acquire, namely the buildings on the land. It appears to their Lordships that in any event this objection to the notification comes too late, because the parties proceeded under the Land Acquisition Act to follow forth all the procedure which that statute lays down right up to and including the final determination of compensation. The Court E that dealt with the matter was really a compensation Court, and if it had been intended to attack the whole proceedings as initially invalid this would more properly have been done before some other tribunal. The Court did however incidentally consider the question of the validity of the notice, and their Lordships agree F with the view taken that the notification is not open to objection. Junior counsel for the appellants sought to satisfy their Lordships that the statement in the recital, namely that the site belonged to the Government, was in fact, inaccurate and that the claimants were entitled to the sites upon which the various bungalows were erected. One thing is quite clear from the legal point of view and G that is that a claimant who desires to obtain compensation must establish his title, and in the case to which we were referred, the recent case in *Secretary of State v. Satish Chandra Sen* (1931) 18 AIR P.C 1 where the question of Cantonment tenure in Bengal was under consideration, it was made clear that al claimant must H establish his title affirmatively. In the present case it may be that

there might be some question as to the Government's title, but it was for the claimants themselves to establish affirmatively their title to the sites. The Courts below which had the advantage of having documents before them which have not been before their Lordships, went very fully into the matter and satisfied themselves that the claimants here had not established their title to the sites. Their Lordships see no reason to differ from this conclusion." A B

35. In *R. Umraomal & Ors. v. State of Tamil Nadu & Anr.* AIR 1986 Mad. 63, a Division Bench of the High Court of Madras has laid down that the Act does not contemplate or provide for acquisition of any interest in land belonging to Government which is being acquired under the Act and the Government is the owner of the land which need not acquire the land. Because no question of Government acquiring what is its own. The court observed; C

"4. The notification in G.O. Ms. No 2753 Revenue, dated 15-12-1980 shows that the Government of Tamil Nadu intended to acquire 'the superstructures on the land in R. S. No. 80 and 882/2 in Tondiarpet village, Tondiarpet taluk, Madras Dt, for the purpose of assigning the lands and the superstructures thereon to provide for 'shopping facilities to small traders and self-employed persons'. The impugned declaration under S. 6 of the Land Acquisition Act 1894, reads that the superstructures on the lands specified in the schedules are needed for a public purpose, to wit, for the purpose of assigning the lands and the superstructures thereon to provide for shopping facilities to small traders and self-employed persons. The contention of the learned counsel Mr. Dolia, for the appellants, is that the Government should have resorted to the Tamil Nadu Requisitioning and Acquisition of Immovable Property Act 1956 as that is the special enactment for acquisition of buildings and should not have resorted to the Land Acquisition Act 1894, which is a Central enactment which provides for acquisition of land for public purposes and for companies, and in fact in one of the grounds in the memorandum of appeal, it has been pointed out that the notification under the provisions of the Land Acquisition Act is void and without jurisdiction. This contention, in our view, is not well-founded for the simple reason that under S. 3 of the Land Acquisition Act (Act 1 of 1894) the expression 'land' includes things attached to the earth or things permanently fastened to D E F G H

A anything attached to the earth. Secondly, it must be noted that the lands in question belong to Government and the appellants are lessees of the land. It is therefore clear that the Government did not propose to acquire what was already their own, but only the superstructures built upon their lands. In *Deputy Collector, Calicut Dn. v. Aiyavu*, (1911) 9 Ind Cas 341, Wallis J. as he then
B was, observed-

> "It is, in my opinion, clear that the Act does not contemplate or provide for the acquisition of any interest which already belongs to Government in land which is being acquired under the Act, but only for the acquisition of such interests in the land as do
C not already, belong to the Government."

It is, therefore, manifest that when the Government is the owner of the land, it need not acquire the land, because there can be no question of Government acquiring what is its own. It has therefore to acquire only the superstructures which stood on the land
D belonging to it and such an application (acquisition?) can be made under the Land Acquisition Act (Act 1 of 1894). We are, therefore, of the view that the Government was not wrong in resorting to Act 1 of 1894. That disposes of one of the challenges made to the impugned notification."

E 36. A Division Bench of the High Court of Allahabad in *Secretary of State v. Allahabad Bank Ltd.* AIR 1939 All. 34 observed that it is open to the Government to deny that the owners have any interest in the land as opposed to the buildings. What has been emphasized is that the Government would have to make a claim to all the interests of the owners
F of the buildings, whatever that might be. It was held that the reference under section 18 could not have been refused on the ground that Government have in effect acquired the buildings and not the lands forming site of the buildings. In the said case, court observed:

> "5. From the above it is clear that the view of the Full Bench was
G that in order that proceedings under the Act should be taken the Government were bound to acquire the land, that is to say, they could not claim to acquire buildings only, they were bound to claim the acquisition of the whole interest of the owner of the buildings. It was open to the Government to deny that the owner had any interest in the land as opposed to buildings, but in order to bring

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the proceedings within the Act the Government would have to make a claim to all the interest of the owner of the buildings whatever that might be."

37. It was submitted on behalf of the respondents that definition of land under section 3(a) of the Act includes "benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth" but does not define land as meaning "benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth". Thus, there cannot be an acquisition of only a portion of a building without acquiring the underlying land. The submission is based upon *Raja Shyam Chunder Mardraj & Ors. v. The Secretary of State for India in Council* (1907-08) 12 CWN 569 at page 572. Following is the relevant discussion made by the Calcutta High Court;

> "The first matter which strikes us in connection with, and which seems to be a fatal objection to these proceedings is that the rights of fishery which have now been acquired were previously acquired by Government in 1896. The Government then took up the foreshore over which the fishery rights now to be acquired are exercised, and consequently acquired the foreshore and all rights existing in connection with it and exercised over it. The Government cannot therefore take them up again. The second objection to these proceedings is that the Government is now taking up fishery rights, that is incorporeal rights without taking up the land over which they are exercised and which, as already pointed out Government has already taken up, and which is its own property. Government cannot in our opinion do this under the Land Acquisition Act. Land is defined in the Act as including benefits arising out of land, etc. But land is not defined as meaning benefits arising out of land. Therefore, fishery rights are not land, and it is only land, including the rights arising out of it, but not the rights detached from the land, that can be acquired under the Act. The Government pleader calls our attention to the definition of "persons interested," in which it is said that a person shall be deemed to be interested in land, if he is interested in an easement affecting the land." This is no doubt correct, but it does not follow that because a person interested in an easement affecting the land may be entitled to share in the compensation awarded for

A the land that an easement comes within the definition of land, and can be acquired under the Act detached from the land affected by it."

38. In order to buttress the aforesaid submission, reliance has also been placed on *Dasarath Sahu & Ors. v. Secy. of State*, AIR 1916 B Pat. 330(1) in which the Court has laid down thus:

"2. The proceedings appear to have been misconceived from the outset. No doubt the definition in Section 3(a) of the Act includes in the word "land" things attached to the earth, but the Act does not contemplate the acquisition of things attached to C the land without the land itself. The law upon this point has been clearly laid down in *Shyam Chunder Mardraj v.Secy. of State* [(1908) 35 Cal 525.], where it was held that Government could not use the Land Acquisition Act for the purpose of acquiring fishery rights over land which was already the property of Government. It was pointed out that it is only the land including D the rights which arise out of it, and not merely some subsidiary right, which is capable of acquisition under the Act."

39. The respondents have also relied upon the decision of Allahabad High Court in *Makhan Lal & Ors. v. Secy. of State*, AIR 1934 All. 260 as to their 'land'. Following is the relevant portion of the E decision:

"22. .... In *Dasarath Sahu v. Secy. of State* [(1916) 35 IC 97.] , the Patna High Court held that the term "land" in Section 3(a) of the Land Acquisition Act, included things attached to the earth, and the Act did not contemplate the acquisition of only things F attached to the land without the land itself.

23. In the case before the Patna High Court an attempt had been made to acquire things standing on the land apart from the land itself, and the High Court held that the proceedings were without jurisdiction. On behalf of the Secretary of State it has G been argued that in this particular case what was sought to be acquired was not the site namely the land but only the buildings thereon. In our opinion this argument is not correct. Firstly, it would not be open to the Local Government to acquire anything apart from the land and, secondly, as a matter of fact, the Notification indicates that what was sought to be acquired was H

land. We have quoted the Notification and we may point out that the word "land" clearly appears on the face of it. The Notification begins with these words: "The land designated below," and under this Notification appears a specification of the land." A

40. In *Raja Shyam Chunder Mardraj v. Secretary of State for India Council* (supra), it has been observed that the Government was taking up fishing rights without taking up the land over which they are exercised. It was observed that Government could not have taken up the fishery rights. It was held that fishery rights are not land, and it is only land, including the rights arising out of it, but not the rights detached from the land can be acquired under the Act. In *Dasarath Sahu* (supra) it has also observed that Section 3(a) includes with the word "land" things attached to the earth, but the Act does not contemplate the acquisition of things attached to the land without the land itself. Reliance was placed on *Raja Shyam Chunder Mardraj* (supra). In *Makhan Lal v. Secy. of State* (supra) and *Secretary of State v. Allahabad Bank Ltd.* (supra) the decision in *Dashrath Sahu* (supra), which has been followed. B C D

41. However, this Court in *Collector of Bombay v. Nusserwanji Rattanji Mistri and Ors.*, AIR 1955 SC 298 has considered the question that when the Government was having interest in the land and acquires a land under the provisions of the Land Acquisition Act, the Government acquires the sum total of private interests subsisting in them. If the Government has itself an interest in the land it is only to acquire other interest outstanding therein, the Government interest cannot be acquired under the Act though an investigation can be made of such interest, but that would not make the subject of acquisition. This Court observed thus; E F

"(12) We are unable to accept his contention. When the Government acquires lands under the provisions of the Land Acquisition Act, it must be for a public purpose, and with a view to put them to that purpose, the Government acquires the sum total of all private interests subsisting in them. If the Government has itself an interest in the land, it has only to acquire the other interests outstanding therein, so that it might be in a position to pass it on absolutely for public user. In In the Matter of the Land Acquisition Act : The Government of Bombay v. Esupali Salebhai I.L.R [1909] Bom. 618 Batchelor, J. observed : G H

A "In other words Government, as it seems to me, are not debarred from acquiring and paying for the only outstanding interests merely because the Act, which primarily contemplates all interests as held outside Government, directs that the entire compensation based upon the market value of the whole land, must be distributed among the claimants".

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There, the Government claimed ownership of the land on which there stood buildings belonging to the claimants, and it was held that the Government was bound to acquire and pay only for the superstructure, as it was already the owner of the site. Similarly in Deputy Collector, Calicut Division v. Aiyavu Pillay [1911] 9

C I.C. 341, Wallis, J. (as he then was) observed:

"It is, in my opinion, clear that the Act does not contemplate or provide for the acquisition of any interest which already belongs to Government in land which is being acquired under the Act, but only for the acquisition of such interests in the land as do

D not already belong to the Government".

With these observations, we are in entire agreement. When Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government

E acquiring what is its own. An investigation into the nature and value of that interest will no doubt be necessary for determining the compensation payable for the interest outstanding in the claimants, but that would not make it the subject of acquisition. The language of section VIII of Act No. VI of 1857 also supports

F this construction.

Under that section, the lands vest in the Government "free from all other estates, rights, titles and interests", which must clearly mean other than those possessed by the Government. It is on this understanding of the section that the award, Exhibit P,

G is framed. The scheme of it is that the interests of the occupants are ascertained and valued, and the Government is directed to pay the compensation fixed for them. There is no valuation of the right of the Government to levy assessment on the lands, and there is no award of compensation therefore.

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(13) We have so far assumed with the respondents that the right of the Government to levy assessment is an interest in land within the meaning of section VIII of Act VI of 1857. But is this assumption well-founded ? We think not. In its normal acceptation, "interest" means one or more of those rights which go to make up "ownership". It will include for example, mortgage, lease, charge, easement and the like, but the right to impose a tax on land is a prerogative right of the Crown, paramount to the ownership over the land and outside it. Under the scheme of the Land Acquisition Act, what is acquired is only the ownership over the lands, or the inferior rights comprised therein. Section 3(b) of the Land Acquisition Act No. I of 1894 defines a "person interested" as including

> "all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land".

Section 9 requires that notices should be given to all persons who are interested in the land. Under section 11, the Collector has to value the land, and apportion the compensation among the claimants according to their interest in the land. Under section 16, when the Collector make an award "he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrance". The word "encumbrance" in this section can only mean interests in respect of which a compensation was made under section 11, or could have been claimed. It cannot include the right of the Government to levy assessment on the lands. The Government is not a "person interested" within the definition in section 3(b), and, as already stated, the Act does not contemplate its interest being valued or compensation being awarded therefore.

(14) It is true that there is in Act No. VI of 1857 nothing corresponding to section 3(b) of Act No. I of 1984, but an examination of the provisions of Act No. VI of 1857 clearly shows that the subject-matter of acquisition under that Act was only ownership over the lands or its constituent rights and not the right of the Government to levy assessment. The provisions

A relating to the issue of notices to persons interested and the apportionment of compensation among them are substantially the same."

(Emphasis supplied)

B 42. In *Special Land Acquisition Officer and Rehabilitation Officer, Sagar v. M.S. Seshagiri Rao & Anr.* AIR 1968 SC 1045 the high court has observed that the Government had failed to exercise the right that it had under the terms of the grant and had adopted the procedure prescribed by the Land Acquisition Act. In the said factual matrix this court has laid down that the Act is silent as to the acquisition of partial C interests in the land but it cannot be inferred therefrom that interest in the land is restricted because of the existence of rights of the State in the land cannot be acquired. Where the interest of the owner is clogged by the right of the State, the compensation payable is only the market value of that interest subject to the clog. This Court has further observed that State in a proceeding for acquisition does not acquire its own interest D in the land, thus

"(4) The High Court also placed reliance upon the judgment of the Madras High Court in The State of Madras v. A. Y. S. Parisutha Nadar [1961] 2 M.L.J. 285. In that case the main question decided was whether it was open to a claimant to E compensation for land under acquisition to assert title to the land notified for acquisition as against the State Government when the land had become vested in the Government by the operation of the Madras Estates (Abolition and Conversion into Ryotwari) Act 26 of 1948. On behalf of the State it was contended that F once an estate is taken over by the State in exercise of its powers under the Estates Abolition Act, the entire land in the estate so taken over vested in the State in absolute ownership, and that no other claim of ownership in respect of any parcel of the land in the estate could be put forward by any other person as against the State Government without obtaining a ryotwari patta under G the machinery of the Act. The High Court rejected that contention observing that the Government availing itself of the machinery under the Land Acquisition Act for compulsory acquisition and treating the subject-matter of the acquisition as not belonging to itself but to others, is under an obligation to pay compensation as

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provided in the Act, and that the Government was incompetent in the proceeding under the Land Acquisition. Act to put forward its own title to the property sought to be acquired so as to defeat the rights of persons entitled to the compensation. The propositions so broadly stated are, in our judgment, not accurate. The Act contemplates acquisition of land for a public purpose. By acquisition of land is intended the purchase of such interest outstanding in others as clog the right of the Government to use the land for the public purpose. Where the land is owned by a single person, the entire market value payable for deprivation of the ownership is payable to that person : if the interest is divided, for instance, where it belongs to several persons, or where there is a mortgage or a lease outstanding on the land, or the land belongs to one and a house thereon to another, or limited interests in the land are vested in different persons, apportionment of compensation is contemplated. The Act is, it is true, silent as to the acquisition of partial interests in the land, but it cannot be inferred therefrom that interest in land restricted because of the existence of rights of the State in the land cannot be acquired. When land is notified for acquisition for a public purpose and the State has no interest therein, market value of the land must be determined and apportioned among the persons entitled to the land. Where the interest of the owner is clogged by the right of the State, the compensation payable is only the market value of that interest, subject to the clog.

(5) We are unable to agree with the High Court of Madras that when land is notified for acquisition, and in the land the State has an interest, or the ownership of the land is subject to a restrictive covenant in favour of the State, the State is topped from setting up its interest or right in the proceedings for acquisition. The State in a proceeding for acquisition does not acquire its own interest in the land, and the Collector offers and the Civil Court assesses compensation for acquisition of the interest of the private persons which gets extinguished by compulsory acquisition and pays compensation equivalent to the market value of that interest. There is nothing in the Act which prevents the State from claiming in the proceeding for acquisition of land notified for acquisition that the interest proposed to be acquired is a restrictive interest.

(6) We agree with the observations made by Batchelor, J., in Government of Bombay v. Esufali Salebhai I.L.R. 34 Bom. 618:

"The procedure laid down in the Act is so laid down as being appropriate to the special case which is considered in the Act, i.e., the case where the complete interests are owned privately. But that special case is, as I understand it, singled out by the legislature as the norm or type with the intent that in other cases which only partially conform to the type the procedure should be followed in so far as it is appropriate, nor that such cases should be excluded from the Act because they do not wholly conform to the type. In other words, Government. . . are not debarred from acquiring and paying for the only outstanding interests merely because the Act, which primarily contemplates all interests as held outside Government, directs that the entire compensation based upon the market value of the whole land, must be distributed among the claimants. In such circumstances, as it appears to me, there is no insuperable objection to adapting the procedure to the case on the footing that the outstanding interests, which are the only things to be acquired, are the only things to be paid for."

The principle of *Esufali Salebhai*'s case I.L.R. 34 Bom. 618 was it may be observed, approved by this Court in *The Collector of Bombay v. Nusserwanji Rattanji Mistri & Others* 1955 SCR 1311 = (AIR 1955 SC 298)."

(Emphasis supplied)

43. In view of the authoritative pronouncement made by this Court in *Special Land Acquisition Officer and Rehabilitation Officer, Sagar v. M.S. Seshagiri Rao & Anr.* (supra), *Collector of Bombay v. Nusserwanji Rattanji Mistri and Ors. (supra),* the decision in *Raja Shyam Chunder Mardraj v. Secretary of State for India Council* (supra) of Calcutta High Court, *Dasarath Sahu v. Secy. of State* (supra) by Patna High Court (supra), *Makhan Lal v. Secy of State* (supra) of Allahabad High Court which was followed in *Dasarath Sahu* (supra) and also the decision of *Secretary of State v. Allahabad Bank Ltd.* (supra) of the same High Court following *Dasarath Sahu* (supra) can no longer be said to be laying down a good law and are hereby overruled.

VIII. In Re : Acquisition of part of building without land under section 49 of the Act.

44. It was further submitted that Section 49 of the Act does not empower the acquisition of any building or part thereof *de hors* the underlying land. The submission to that effect to be accepted would require ownership of the land with owner of the building and owner has required by expressing desire that the whole of the building with land be acquired is not the factual scenario in the instant case. The land upon which the building is standing need not be acquired and there is no necessity to acquire it. There can be acquisition of part of the building or the house or manufactory as the owners have not exercised their option to insist for acquisition for whole of the building as such only the rights which they have in the particular floors are being acquired. No doubt about it that under proviso to Section 49(1) there can be acquisition of land beside the part of the building, house or manufactory and when the land is proposed to be taken, the dispute as to whether it does or does not form part of the house, manufactory or building, the Collector shall refer the determination of such question to the Court.

45. In State *of Bihar & Anr. v. Kundan Singh & Anr.* AIR 1964 SC 350, this Court had considered the provision of section 49 and has observed thus;

> "10. .....The provisions of s. 49(1) prescribe, inter alia, a definite prohibition against putting in force any of the provisions of the Act for the purpose of acquiring a part only of any house, if the owner desires that the whole of such house shall be acquired. This prohibition unambiguously indicates that if the owner expresses his desire that the whole of the house should be acquired, no action can be taken in respect of a part of the house under any provision of the Act, and this suggests that where a part of the house is proposed to be acquired and a notification is issued in that behalf, the owner must make up his mind as to whether he wants to allow the acquisition of a part of his house or not. If he wants to allow the partial acquisition, proceedings would be taken under the relevant provisions of the Act and an award directing the payment of adequate compensation would be made and would be followed by the taking of possession of the property acquired. If, on the other hand, the owner desires

A that the whole of the house should be acquired, he should indicate his desire to the Land Acquisition officer and all further proceedings under the relevant provisions of the Act must stop. This provision thus seems to suggest that if an objection is intended to be raised to the acquisition of a part of the house, it must be made before an award is made under s. 11. In fact, it should be B made soon after the initial notification is published under s. 4; otherwise, if the proceedings under the relevant provisions of the Act are allowed to be taken and an award is made, it would create unnecessary confusion and complications if the owner at that stage indicates that he objects to the acquisition of a part of C his house; at that stage, it would no doubt be open to him to claim adequate compensation in the light of the material provisions of s. 23 of the Act, but that is another matter."

This Court has further laid down in *Kundan Singh* (supra) that the reference to be made under the second proviso to section 49(1) D cannot be mixed up with a claim which can be made in reference proceedings sent to the court under section 18 by the Collector thus;

"11. The first proviso to s. 49(1) also leads to the same conclusion. If the owner has made his objection to the acquisition of a part of his house, it is open to him to withdraw or modify his objection E before an award is made under s. 11; and if he withdraws his objection, further proceedings will follow and if he modifies his objection, steps will have to be taken as indicated in the other provisions of s. 49. This proviso therefore, suggests that the objection of the owner to acquisition of a part of his house has to be considered and dealt with before an award is made under s. F 11.

12. It would be noticed that if an objection is made by the owner under s. 49(1), the Collector may decide to accept the objection and accede to the desire of the owner to acquire the whole of the house. In that case, further proceedings will be taken on the G basis that the whole of the house is being acquired. In some cases, the Collector may decide to withdraw acquisition proceedings altogether, because it may be thought not worthwhile to acquire the whole of the house; in that case again, nothing further remains to be done and the notification issued has merely

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to be withdrawn or cancelled. But cases may arise where the Collector may not accept the claim of the owner that what is being acquired is a part of the house; in that case, the matter in dispute has to be judicially determined, and that is provided for by the second proviso to s. 49(1). Under this proviso, the Collector is under an obligation to refer the matter to the Court and he shall not take possession of the land under acquisition until the question is determined by the Court. In dealing with this matter, the Court has to have regard to the question as to whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house.

13. Sub-s. (2) of s. 49 seems to contemplate that where land is acquired and it is shown to form part of a house, it would be open to award to the owner of the house additional compensation under the third clause of s. 23, and so, this sub-section deals with cases where the claim made by the owner of the house under the third clause of s. 23 is excessive or unreasonable, and provides that the appropriate Government may decide to acquire the whole of the land of which the land first sought to be acquired forms a part rather than agree to pay an unreasonable or excessive amount of compensation as claimed by the owner. This provision also emphasises the fact that where land is acquired and it results in the acquisition of a part of the house connected with the land, the owner can make a claim for additional compensation under s. 23, or he may require, before the acquisition has taken place, that the whole of the house should be acquired. These are two alternative remedies available to the owner; if he wants to avail himself of the first remedy under s. 23, he may make a claim for additional compensation in that behalf and such a claim would form the subject-matter of an enquiry under s. 18; if, on the other hand, he claims the other alternative remedy provided by s. 49(1), that must form the subject-matter of another proceeding which has to be dealt with under s. 49 itself. It is true that in cases of dispute, this matter also goes to the same Court for its decision on a reference by the Collector; but though the Court is the same the proceedings taken are different and separate and must be adopted as such. A claim under s. 49 which can be properly tried by the Court on a reference made to it by the

A Collector under the second proviso to s. 49(1), cannot be mixed up with a claim which can be made in reference proceedings sent to the Court under s. 18 by the Collector.

14. Section 49(3) merely dispenses with the necessity of issuing a further fresh declaration or adopting other proceedings under B sections 6 to 10 in regard to cases falling under s. 49(2).

15. Thus, it would be seen that the scheme of s. 49 is that the owner has to express his desire that the whole of his house should be acquired before the award is made, and once such a desire is expressed, the procedure prescribed by s. 49 has to be followed. C This procedure is distinct and separate from the procedure which has to be followed in making a reference under s. 18 of the Act. In the present case, the respondents have taken no steps to express their desire that the whole of their house should be acquired, and so, it was not open to the High Court to allow them to raise this point in appeal which arose from the order passed D by the District Judge on a reference under s. 18. That being our view, we do not think necessary to consider the respondents' contention that what is acquired in the present proceedings attracts the provisions of s. 49(1)."

46. In *Jagannath Ganeshram Agrawal & Anr. v. State of* E *Maharashtra & Anr.* AIR 1986 Bom. 241, it was observed that the requisition cannot continue for long. The authority must make up their mind to acquire the property. It was held that a part of the building can also be acquired and there is no restriction that such part cannot be acquired under the Act. The only embargo is that when it initiates F proceedings to acquire a part of the building, the owner may insist upon the entire building to be acquired. The High Court has taken note of the shortage of accommodation at Jalgaon and in many towns of Maharashtra, it observed;

"4. .....Section 49(1) postulates that the land acquisition G authority can acquire a part of the building that the only embargo is that when it initiates proceedings to acquire a part of the building, the owner of that building may insist upon the entire building being acquired. Under sub-s. (2) such owner is given the further option to go back upon his instance under sub-sec. (i) to acquire the entire building and allow the authorities to acquire

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a part of the building. S. 49 far from declaring that a part of the building cannot be acquired, clearly postulates that such power vests in the land acquisition authority. There is, therefore no impediment in the Government acquiring block No. 10 or any portion of the said building. In view of shortage of accommodation at Jalgaon and in many towns in Maharashtra, judical notice could be taken of the fact that buildings requisitioned for public purpose to accommodate public servants posted at such places for discharging their official duties is a continuing necessity. With the present allocation of funds for construction of buildings, it is doubtful whether this need would ever be fully met in the foreseeable future in the State of Maharashtra. the need to requisition accommodation is a continuing need. But then, if the need is perpetual or of a permanent character, even as laid down in both the decisions of the Supreme Court referred to above, power to requisition cannot be resorted to. The authorities must make up their mind to acquire the building or a portion of the building, as the case may be. In the case of *Collector of Akola v. Ramchandra*, AIR 1968 SC 244 under the amended S. 49(1) of the West Bengal Premises Requisition and Control (Temporary Provision) Act, the Court granted three years' time to the Government to acquire the property as the government wanted that property. So too in this case, we find that the government undoubtedly requisitioned the property for a valid public purpose to wit, to accommodate the employees of the State of Maharashtra. There is no gainsaying that acute dearth of accommodation continues to persist. Providing accommodation for the officers is urgently necessary in the public interest. As the initial requisition of the premises was in public interest, that order is unassailable inasmuch as that need continued to exist all these 30 years and even now. But nothing apparently has been done to meet the need. The requirement of the government appears to be of a permanent character, and consequently the requisition which as observed by the Supreme Court, can only be to satisfy a temporary need cannot be resorted to or having been resorted to continue indefinitely. That practically amounts to acquiring the property without following the procedure laid down under the Land Acquisition Act and paying the full market value of the property. However under the Land Acquisition Act

A the Government undoubtedly has power to acquire. As the need appears to be of a permanent nature, while the requisition cannot be continued for any length of time because the Government would be very well within its right to acquire it, any order quashing the requisition would not be in the interests of justice provided the government considers the question of acquiring this property within a reasonable time. In the circumstances of the present case, we think, the government should be able to make up its mind in this regard within a period of 18 months from today. Already the petitioners have been deprived of this property for the last almost 30 years and these writ petitions have been pending now for over 10 months. We are, therefore, not inclined to accede to the submission of the learned Government Pleader that further three years time should be given to the government in these petitions, as was done by the Supreme Court in the case of *Jiwani Kumar Paraki v. First Land Acquisition Collector, Calcutta*, AIR 1984 SC 1707 for deciding upon acquiring the property."

(Emphasis supplied)

We approve the interpretation made by the High Court of Bombay in view of decision in *S.P. Jain v. Krishna Mohan Gupta & Ors.* (1987) 1 SCC 191, in which this Court has held that law to take a pragmatic view and also take cognizance of the current capabilities of technology and lifestyle of the community, this Court has laid down thus:

"18. We are of the opinion that law should take pragmatic view of the matter and respond to the purpose for which it was made and also take cognizance of the current capabilities of technology and life style of the community. It is well settled that the purpose of law provides a good guide to the interpretation of the meaning of the Act. We agree with the views of Justice Krishna Iyer in *Busching Schmitz Private Ltd.* case (1977) 2 SCC 835 that legislative futility is to be ruled out so long as interpretative possibility permits. Residentiality depends for its sense on the context and purpose of the statute of the project promoted."

47. The respondents have relied on Harsook Das Bal Kishan Das v *First Land Acquisition Collector* (1975) 2 SCC 256 in which this Court has observed:

"6. "Land is defined in Section 3(a) of the Act to include benefits to arise out of the land and things attached to the earth or permanently fastened to anything attached to the earth. Therefore, land contemplated in Section 49(2) of the Act may be land or land including building or part of a building." A

The decision in *Harsook Das Bal Krishan Das* (supra) does not at all help the respondents. In the said case it has been laid down that there can be acquisition of land or part of building, In our opinion, when State is the owner then it is not necessary to acquire such an interest in the land. B

48. Reliance has also been placed on *Saramma Itticheriya v. State of Kerala & Ors.*, AIR 2008 Ker 72 wherein interpretation of Section 49 (1) of the Act has been made. The High Court has held that Section 49 (1) gives power to the owner who expresses his desire to acquire the entire building. The owner has a right to withdraw the option exercised before the award is passed. The words "whole of such house or manufactory or building" includes land in which it is situated. It was not a case of owner not having title in land or that of dual ownership. The State was not the owner of the land. Ownership of the land was not in issue in the said case. So the decision is of no help to the cause espoused by the respondents. In said case it was observed: C D

"7. Next question is what is meant by acquisition of the whole of such house or manufactory or building as mentioned under Section 49(1). When the Collector accepts the option to acquire the entire building, not only the building materials are to be acquired, but the entire building including the land where the building is situated need be acquired. In Shaji C. Varkey's case (supra), the Division Bench rightly held that the landlord cannot exercise an option to acquire the building materials alone. His right is to exercise the option to acquire the entire building. 'Entire building' means the land where the building is situated. There is no provision under Section 49(1) enabling the land owner to compel the Collector to acquire the building materials alone and return the land where the building is situated. When landlord exercises the option under Section 49(1), State can acquire the entire building and decide either to demolish that part of the building or use it with or without necessary modifications. The decision of Harsook Das Bal Kishan Das's case (supra) is also that the land including the E F G H

A building has to be acquired once the landlord expresses desire to acquire the whole building in Rajalakshmy v. Assistant Engineer AIR 1980 Kerala 68 (FB), majority of the Judges held that when building alone is acquired, an order can be passed by the Court for urgent removal of the building materials by the Government. But, in that case, Government acquired only the building materials and the building was demolished. But, building materials were not removed and owner of the building approached the Court for a direction to remove the building materials. The question when the building is acquired, whether the land on which building is situated also to be acquired was not considered. ....A constitution Bench of the Supreme Court in D.G. Gose and Co. Pvt. Ltd. v. State of Kerala, (1980) 2 SCC 410 considered the meaning of the word 'building' in the context of Kerala Building Tax Act. Before considering the definition of 'building' under that Act natural and ordinary meaning was considered as follows:

"21. The word 'building' has been defined in the Oxford English Dictionary as follows:

'That which is built; a structure, edifice: now a structure of the nature of a house built where it is to stand.'

Entry 49 therefore includes the site of the building as its component part. That, if we may say so, inheres in the concept or the ordinary meaning of the expression building'.

22. A somewhat similar point arose for consideration in *Corporation of the City of Victoria v. Bishop of Vancouver Island* (AIR 1921 PC 240) with reference to the meaning of the word 'building' occurring in Section 197(1) of the Statutes of British Columbia, 1914. It was held that the word must receive its natural and ordinary meaning as 'including the fabric of which it is composed, the ground upon which its walls stand and the ground embraced within those walls'. That appears to us to be the correct meaning of 'building'."

The above decision was followed by the Apex Court in *T. Lakshmipathi v. P. Nithyananda Reddy* (2003) 5 SCC 150: AIR 2003 SC 2427 it was observed as follows at paragraph 23:

"23. In *D.G. Gose Co. (Agents) (L) Ltd. v. State of Kerala* (1980) 2 SCC 410: AIR 1980 SC 271 while dealing with Entry

49 of List II of the Seventh Schedule of the Constitution, making a reference to Oxford English Dictionary, this Court has held that the site of the building is a component part of the building and therefore inheres in it the concept or ordinary meaning of the expression 'building'. Referring to *Corpn. of the City of Victoria v. Bishop of Vancouver Island* (AIR 1921 PC 240) it was held (at SCC p. 425, para 22) that the word 'building' must receive its natural and ordinary meaning as 'including the fabric of which it is composed, the ground upon which its walls stand and the ground embraced within those walls."

The meaning of Section 49(1) is made very clear by the decision of the Supreme Court in *Deep Chand v. Land Acquisition Officer* (AIR 1994 SC 1901). The Apex Court after quoting the section held as follows:

"A reading of the above section shows that a right has been given to the owner of the land to object to the putting of the Act into force when only a part of any house, manufactory or other building is sought to be acquired and call upon the State to acquire whole of such house, manufactory or building. Therefore, what has been given is a right to object only to acquisition of part of the building, etc. without acquiring the whole of the house, manufactory building. In determining the question whether the land proposed to be taken was reasonably required for the full and unimpaired use of the house, manufactory or building left out of acquisition all that the Court has to examine is whether the objection is sustainable requiring the whole of the property, including the house, manufactory or other building, should be acquired or portion of the property proposed for acquisition should be left out of acquisition for full and unimpaired use of the house, manufactory or building, of the property proposed for acquisition. It is one of determination of the convenient use and enjoyment of the unacquired portion of the land or a building, manufactory or the other house. If the answer is in favour of the land owner the only choice left to the Government is either to acquire the whole property or drop the proposed acquisition; It brings about no other consequence. In other words the law says — acquire the whole property or leave it. But for the acquisition the owner

A is entitled to use the property in any manner he intends to make use or enjoy it. Obviously the decision by the Civil Court only hinges upon the convenient or unimpaired use and enjoyment of the house, manufactory or building with the residue of the land left over after acquiring the other property."

B Therefore, the landlord has to express his desire to acquire the whole of the building. Once such a desire is expressed before award is passed, the Land Acquisition Officer has no option, but to acquire the entire building including the land in which the building is situated or withdraw from the acquisition and the building includes the property in which the building is situated C and if there is any dispute as to whether any land proposed to be taken does or does not form part of a house or building within the meaning of the section, the Collector has to refer the matter to the civil Court and await the decision of the civil Court for taking possession of the land.

D From the foregoing discussion, we hold as follows:

...

(8) The words 'whole of such house or manufactory or building' includes land in which it is situated. In other words, when entire E building is acquired the land in which the building is situated also has to be acquired by the Government;

(9) If the owner, expresses his opinion only to acquire the building materials excluding the land in which it is situated, it is not an option exercised under Section 49(1);

F ...

We answer the reference accordingly."

49. There is no dispute with aforesaid proposition but where part of building that too a multi-storied building is being acquired, the land need not be acquired more so when the owner of building is not the G owner of land and his entire interest in part of building can be acquired.

IX. Violation of Article 300A by acquisition in part

50. It was further submitted that without acquisition of the underlying land, the acquisition of building or portion thereof amount to H overreach of the State's power to eminent domain. Reliance has been

placed on *State of Bihar v. Kameshwar Prasad* 1952 SCR 889 in which this Court observed:

> "It is true that under the common law of eminent domain as recognized in the jurisprudence of all civilized countries, the State cannot take the property of its subject unless such property is required for a public purpose and without compensating the owner for its loss."

51. Reliance has also been placed by this Court in *Trishala Jain & Anr. v. State of Uttaranchal & Anr.* Civil Appeal No.7496-7497 of 2005, decided on 5.5.2011, in which this Court observed:

> "26. Acquisition of land is an act falling in the purview of eminent domain of the State. It is essentially relates to the concept of compulsory acquisition as opposed to voluntary sale. It is trite that no person can be deprived of his property save by authority of law in terms of Article 300A of the Constitution of India. The provisions of the Act provide a complete mechanism for 'deprivation of property in accordance with the law' as stated under the Act. Justifiability and fairness of such compensation is subject to judicial review within the confines of the four corners of the Act. Once the lands are acquired under the Act, the persons interested therein are entitled to compensation as per the provisions of the Act."

52. The aforesaid submission is simply to be rejected. In case the building or portion is acquired without acquiring the underlying land there is no question of overreach of the State's power to the eminent domain. Article 300A interdict taking of the property for a public purpose without compensating the owner for its loss. In case entire ownership of the land does not lie with the owner only the right which is capable of being acquired would be acquired not something which is non-existent. The building or part can be acquired and there is no question of acquisition of the land in such cases. In adjudication of the compensation as per the provisions of Section 23, the State is not depriving the respondents of their property. There is acquisition of land by fair procedure along with reasonable compensation. The action has been taken by the State in accordance with law. The action is legally justified. Thus, there is no question of eminent domain being misused or violation of provisions of Article 300A of the Constitution of India.

A 53. It was also submitted that owner of the land is deprived of his ownership rights over the land when the State purports to acquire only a building or portion thereof standing on his land, without acquiring the underlying land. The submission cannot be accepted as the respondents are not the owner of the underlying land. Secondly, the acquisition of a particular floor as per the provision of section 49 of the act is permissible B and the entire interest of owner in a particular portion has been acquired for that he would be compensated. It is not the case of partial acquisition of the interest on a particular floor. When without selling the land, in a building, a particular floor can be sold why there could not be acquisition of particular floor for public purpose.

C 54. With respect to concept of ownership, reliance has also been placed upon Salmond on Jurisprudence, (12th ed. 1966) at pp. 246-247, 413, and it was observed:

> "According to Sir John Salmond the owner of a material object is he who owns a right to the aggregate of its use. Ownership D denotes the relation between a person and an object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons. The normal case of ownership can be expected to exhibit the following incidents:
>
> E a. The owner will have a right to possess the thing which he owns.
>
> b. The owner normally has the right to use and enjoy the thing owned: the right to manage it, i.e., the right to decide how it shall be used: and the right to the income from it.
>
> F c. The owner has the right to consume, destroy or alienate the thing.
>
> d. Ownership has the characteristic of being indeterminate in duration.
>
> G e. Ownership has a residuary character."

There is no dispute that in the aforesaid proposition. The owner has the right to use and enjoy a particular portion but owner cannot set up a plea for acquisition of an interest when he does not have that particular right or interest or title. His right to manage it, right to decide, H how it shall be used, right to income from it has to be in accordance with

the law. Right of individual has to give way to the public purpose on being duly compensated by way of fair procedure.

55. It was also contended on behalf of respondents that when the State acquires building or portion thereof without acquiring the underlying land, the State is depriving the owner not only of his property in the building but also its property in the underlying land. The owner of the land will not be able to exercise his right to use the land to the extent the building on which it is acquired. Further, if the building has been compulsorily acquired, the underlying land will be rendered valueless, as no person would want to buy the underlying land from the owner. Thus, the owner of the land will be deprived of his right to obtain a fair value or income from the land upon its alienation or transfer. Thus, upon acquisition of a building, the State also deprives the land owner of his rights in the land. However, by not acquiring the underlying land, the State is seeking to evade its obligation to compensate the owner of land for his loss. The provisions would become confiscatory.

56. We find no merit in the aforesaid submission. Firstly, it presupposes ownership of land also is with owner of building, if that be so, the owner can exercise the option for acquisition of the entire building and land which is available under Section 49 of the Act and besides that the owner can be compensated also in case he is having any interest in the land and in case his land is rendered of less utility obviously he can claim compensation under the provisions of the Land Acquisition Act. If the land is rendered value less then also adequate compensation can be claimed under the provisions of Section 23 in accordance with law. In case right is affected in land which is not acquired by severance, for that also compensation can be claimed. Thus, the submission so placed is factually incorrect and legally unsustainable.

IX. Whether valuation method of building mandates acquiring of land?

57. It was also urged that land and building constitute a single unit and there cannot be a break-up in valuation of land and building separately as such land is necessary to be acquired with building. Reliance has been placed on decision in *State of Kerala v. P.P. Hassan Koya*, AIR 1968 SC 1201 in which this Court observed;

"4. Two questions were urged in support of the appeal:

(1) that the Receiver having accepted the award of the Land

A Acquisition Officer, the respondent could claim compensation only for the right which he had in the land and the buildings and the method adopted by the Land Acquisition Officer was in the circumstances the only appropriate method; and

(2) that the rate of capitalization was unduly high.

B In our judgment, there is no force in either of the contentions. When land which expression includes by Section 3(a) of the Act benefits to arise out of land and things attached to the earth or fastened to anything attached to the earth — is notified for acquisition, it is notified as a single unit whatever may be the C interests which the owners thereof may have therein. The purpose of acquisition is to acquire all interests which clog the right of the Government to full ownership of the land, i.e. when land is notified for acquisition the Government expresses its desire to acquire all outstanding interests collectively. That is clear from the scheme of the Land Acquisition Act."

D (Emphasis supplied)

In the aforesaid case there was notification under section 4 of the Act for acquisition of seven units of land with buildings. The buildings constructed on the land belonged to the respondent and were let out to E tenants on rent. This Court has held that when notification is of a single unit whatever may be the interest of the owners thereof may have therein the purpose of acquisition is to acquire all interest which clog the right of the Government to full ownership of the land. In the instant cases, as the ownership of the land does not lie with the respondents, thus, it was not necessary to acquire the land. The fact in the said case does not F help at all. It has been laid down that acquisition of entire interest in the part is required and there cannot be acquisition of the part of interest in part of the building, house or manufactory. The entire interest of the owner has to be acquired and that has been precisely done in the instant case.

G 58. Reliance has also been placed on the decision of this Court in *Kiran Tandon v. Allahabad Development Authority,* (2004) 10 SCC 74 thus :

"11. A question which arises here is as to what method for determining the value of the property should be adopted when

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the land is comprised of buildings, trees or some other additions of like nature. In Parks, J.A.: *Principles & Practice of Valuation* (published by Eastern Law House, 1998 Edn.) the following paragraph on p. 332 illustrates the different aspects of the problem:

"Land with buildings is viewed in a different perspective than bare land as such. Land and buildings once married become one unit, and neither land nor building can thereafter be valued separately. A building once erected on or married to the site, as it is technicallv often termed takes unto itself a value which may be either greater or less than the cost of erection depending upon the market situation. If the building properly and economically develops the land, the total value of the complete entity may be worth more than the sum of the individual valuer. In such cases, the excess of the composite value over the sum of the individual values is ascribable as the builder's profit. But there may also be instances to the contrary. It is generally impossible to arrive at the true value of the whole by addition of the parts."

12. In Abdullah Jan Mohd. Ganjee v. State of Bihar [(1967) 1 SCWR 214] it was observed that a building standing on the land and the land on which it stands may not for the purposes of the Land Acquisition Act ordinarily be regarded as separate units capable of being separately valued and the Reference Court in the normal course should have valued the land and building as composite property by the evidence furnished by the value of similar and comparable properties in the neighborhood by capitalisation of rent or other income received out of the property.

13. This principle was reiterated in State of Kerala v. P.P. Hassan Koya [AIR 1968 SC 1201] wherein it was held as under: (AIR p. 1202, para 5)

"In determining compensation payable in respect of land with buildings, compensation cannot be determined by ascertaining the value of the land and the 'break-up value' of the building separately. The land and the building constitute one unit, and the value of the entire unit must be determined with all its advantages and its potentialities."

A 14. In O. Janardhan Reddy v. Spl. Dy. Collector [(1994) 6 SCC 456] it was held that where there are irrigation wells in the land, estimated construction cost of the wells cannot be separately assessed apart from assessment of market value of the land and the value of the land has to be assessed having regard to the availability of irrigation facility on the land as a prime factor. This view has been reiterated in State of Bihar v. Madheshwar Prasad [(1996) 6 SCC 197] and State of Bihar v. Ratan Lal Sahu [(1996) 10 SCC 635]. But there is no hard-and-fast rule that land and building must be valued as one unit. They can be separately assessed if the large portion of the land is lying vacant and is capable of better use as stated by Venkatachaliah J. as His Lordship then was in Administrator General of W.B v. Collector, Varanasi [(1988) 2 SCC 150 : AIR 1988 SC 943] and it will be useful to extract the relevant part of AIR para 8 of the Report: (SCC pp. 159-60, para 17)

"Usually, land and building thereon constitute one unit. Land is one kind of property; land and building together constitute an altogether different kind of property. They must be valued as one unit. But where however the property comprises extensive land and the structures thereon do not indicate a realisation of the full developmental potential of the land it might not be impermissible to value the property estimating separately the market value of the land with reference to the date of the preliminary notification and to add to it the value of the structures as at that time. In this method, building value is estimated on the basis of the prime cost or replacement cost less depreciation. The rate of depreciation is, generally, arrived at by dividing the cost of construction (less the salvage value at the end of the period of utility) by the number of years of utility of the building. The factors that prolong the life and utility of the building, such as good maintenance, necessarily influence and bring down the rate of depreciation."

(Emphasis supplied)

The question in the above matter was as to the method for determining the value of property that has to be adopted in the facts of each case. No doubt about it when land and building once married becomes one unit, neither land nor building can thereafter be valued

separately. But this would not come in the way of determining the valuation of a particular floor, all the aspects of the owners interest and the bundle of other rights can be taken into consideration including support provided by the land and value of the land in the locality etc. Value of the part of the building can also be accordingly assessed. A

X. Conclusion : B

59. Thus, we find that the acquisition process to be legal and valid and the notifications in question are valid and let it be taken to a logical end. Since there was interim stay by the High Court and thereafter a status quo order by this Court we direct that the acquisition be completed as expeditiously as possible. There is no merit in the prayer to drop it. C

60. Accordingly, the appeal is allowed and the impugned judgment and order passed by the High Court is set aside.

Kalpana K. Tripathy Appeal allowed.