
(2012) 04 BOM CK 0109

Bombay High Court

Case No: Writ Petition No. 8515 of 2010

Pravin Kashinath
Bhagat and Others

APPELLANT

Vs

The Collector, District
Raigad and Others

RESPONDENT

Date of Decision: April 4, 2012

Acts Referred:

- Land Acquisition (Companies) Rules, 1963 - Rule 4
- Maharashtra Industrial Development Act, 1961 - Section 2, 32, 32(1), 32(2), 33
- Monopolies and Restrictive Trade Practices Act, 1969 - Section 16, 18, 20
- Rehabilitation Act, 1986 - Section 10, 11, 11(1), 13, 13(1)

Citation: (2012) 3 ALLMR 651 : (2012) 3 BomCR 360 : (2012) 114 BOMLR 1603

Hon'ble Judges: Mohit S. Shah, C.J; Roshan Dalvi, J

Bench: Division Bench

Advocate: Gayatri Singh with Ms. Bhavana Mhatre, for the Appellant; A.B. Vagyan, AGP for Respondent Nos. 1, 3, 4 and 6, Mr. Prashant Chavan with Ms. Shyamali Gadre instructed by . Little and Co., Mr. S.G. Aney a/w. C.S. Balsara and B.H. Antia and H.N. Vakil and Sunil Chavan instructed by . M/s Mulla and Mulla and CBC, for the Respondent

Judgement

Roshan Dalvi

1. The petitioners are residents of Taluka Alibag, District Raigad and are stated to be carrying on cultivation of agricultural land in villages Dherand, Mohte, Shahapur and Dhakte Shahapur more specially villages Dherand and Shahapur in Raigad District. These lands have been acquired by the State under Sections 32 and 33 of the Maharashtra Industrial Development Act, 1961 (MID Act) and under Sections 11, 13 and 14 of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 (Rehab. Act) for a Power Project promoted and to be put up by respondent No. 7 and one Reliance Industries. The petitioners claim that 906 landholders and 500 landless labourers and

their families in the aforesaid villages have been affected by the said acquisition. The petitioners claim that they represent 70% of the affected persons.

2. The petitioners have challenged notifications dated 9/11/2006, 4/4/2008, 5/4/2008, 5/8/2008, 28/7/2009, 25/9/2009, 26/9/2009 and 18/12/2009 under Sections 32 and 33 of the MID Act and Sections 11 & 13 of the Maharashtra State Resettlement and Rehabilitation Act 1999 (Rehab Act).

3. Tata Power Company Ltd., respondent No. 7 is to set up a 1600 MW Coastal Power Plant for which 1200 acres of land is sought to be acquired by the Government as it is a project to be undertaken for public purpose of augmenting the power supply for the city of Mumbai.

4. The respondent No. 7 made its application in that behalf dated 18/4/2006. Respondent No. 2 on behalf of the State initiated acquisition proceedings under MID Act. Respondent No. 7 submitted a Technical Feasibility Report (TFR) in that behalf in April 2006. The report shows the power situation in Maharashtra at that time, the increased demand for the power required by the State, more specially for the city of Mumbai, the power deficit that prevailed at that time and the supply of electrical energy which was to be produced for meeting the increased demand, the planned generation capacity of the existing power situation in the State, the capability of respondent No. 7 in meeting the challenge of producing and supplying electrical energy upon establishing the power plant, the feasibility of the project, the availability of land, the procurement of raw materials, environmental aspects and the schedule for the project. The TFR considers various alternative sites and the nonfeasibility for their acquisition. The report shows the features of part of the land actually acquired also. That land is shown to be in village Mankule and Dherand. The land actually acquired is in villages Shahapur and Dherand.

5. The petitioners contend that the TFR does not show that the area to be acquired is rich agricultural land which, if required to be acquired, has to be first converted into industrial land which is not done. They also contend that the land sought to be acquired was in green zone being rich agricultural land which was to be converted to industrial use which was not done. They further contend that the land consists of mangroves which is also sought to be acquired for a power project which would destroy the mangroves. They contend that satellite mapping which was mandatorily required to be done upon demarcation of the area considering the Coastal Regulatory Zone (CRZ) Regulations was not done as per the guidelines of this Court in WP No. 3246 of 2006 passed on 6/10/2005. Consequently, the inquiry report on mangroves required to be submitted, after site inspection report and panchanama, was not submitted. The petitioners contend that the land acquired was far in excess of what could be required to be acquired for a 1600 MW power plant covering the aforesaid 2 entire villages of Dherand and Shahapur. The petitioners also contend that this land was not notified as forest land. The petitioners also contend that a Detailed Project Report (DPR) was not submitted in time within the prescribed time as agreed under MOU by respondent No. 7.

6. It may be mentioned if the petitioners are cultivating the land sought to be acquired, it would neither be forest land, nor have mangroves where the cultivation is made. Of course, part of the land to be acquired is on the coastline and it is an admitted position that there are mangroves along the coastline. The petitioners contend that false information is given in the TFR by the respondents stating that there are no mangroves on the coastline. That is indeed true. However that applies to villages Mankule and Dherand and not Shahapur.

7. Respondent No. 7 is also stated to have submitted a Detailed Project Report (DPR) in respect of the power project. The petitioners contend that the DPR was submitted only in February 2010 and shows false information that the acquired land is non-arable, is not under the forest or green zone or covered with mangroves. It also falsely states that there have been no complaints of the farmers or other affected persons. This report has not been produced.

8. The respondents contend that 67% of the persons affected have not only not made complaints, but have accepted the package offered by respondent No. 7 which is more than what is required under the National Policy or the National Resettlement Policy or followed by way of usual practice.

9. Upon the State Government accepting the feasibility report, an MOU came to be executed between the State and respondent No. 7 on 4/4/2005. 11. Respondent No. 7 made its application on 18/4/2006 to the Maharashtra Industrial Development Corporation (MIDC) for acquiring the required land for the project. The MIDC issued the aforesaid notifications following due legal process under the MID Act from time to time, all of which have been challenged.

11. The petitioners contend that mere notification under MID Act declaring the area as industrial zone would not suffice and that the declaration must precede the procedure contemplated under the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act) so that the user in the green zone is changed to industrial and is accordingly published before the land is acquired under MID Act because under the MID Act only lands in Industrial zone can be acquired. The petitioners, therefore, contend that the notices issued to affected persons were not properly issued inasmuch as the notice had initially to be issued under the MRTP Act for the change of user of the land and the hearing is required to be given to the affected persons thereunder before the change of the use of the land is affected. The petitioners, therefore, contend that the hearing given to the landholders upon the notification issued under MID Act is also not correct.

12. The initial notification was dated 9/11/2006 u/s 2(g) of MID Act. On 5/4/2008 notices came to be issued to certain landholders u/s 32(2) of MID Act. (the petitioners claim that the notices were not issued to all of them and respondents claim that the notices have been issued to all the landholders at the relevant time). Certain objections were raised by certain farmers on 9/5/2008. The objections of the petitioners are that part of the acquired

land falls under Ambakhore Irrigation Project and that the acquired land is rich agricultural land. Personal hearing being held between 26/5/2008 to 5/6/2008 is contained in the report dated 10/6/2008.

13. The petitioners contend that no hearing was given to the landholders after issue of notices u/s 32(2) of MID Act despite objections of some farmers. The petitioners state that there is no report of the Collector dealing with those objections. Petitioners also contend that notice u/s 32(1) was issued without complying with the mandatory requirements. The petitioners have not shown which other mandatory requirements were required to be complied.

14. On 5/8/2008 notice u/s 11(1) of the Rehab Act came to be issued to the affected persons being the landholders of the lands in the aforesaid villages. The petitioners contend that the notice under Rehab Act was required to be issued prior to the notice under MID Act. They also contend that no hearing was given with regard to the notice under the Rehab Act.

15. The petitioners contend that notice u/s 13(1) of the Rehab Act came to be issued on 30/7/2009. The petitioners have shown the notice published in the Government gazette in November 2009. The petitioners claim that no hearing upon this notice has also been given. The petitioners contend that that notice does not comply with the National Policy of Rehabilitation and Resettlement. The petitioners make a grievance that the minimum and alternative land aspects are not explored and the cumulative effect of the policy has not been addressed.

16. Ms. Gayatri Singh on behalf of the petitioners produced the National Policy itself. It shows that it is applicable to all the projects where involuntary displacement takes place. The petitioners contend that this acquisition is one such case. The petitioners claim that they represent 70% of the displaced persons. Clause 1.4 of the policy provides that acquisition of agricultural land for non-agricultural use must be kept to the minimum, multi cropped and irrigated land must be avoided for acquisition, displacement of the persons must be minimized. Total area of land acquired must also be minimized as also the acquisition of agricultural land. The petitioners also rely upon clause 1.5 of the policy which requires Social Impact Assessment to be done in case where large number of families are affected and all infrastructural facilities and amenities in the resettlement area must be provided within clear time frames for basic minimum requirements comprehensively considered. The respondents contend that each of these requirements have been more than complied by the package offered by respondent No. 7.

17. The petitioners claim that no Social Impact Assessment Study has been done in this case which has been reported by the Special Land Acquisition Officer in his letter dated 19/12/2011. This assessment would be required if the company which is going to use the acquired land has not provided infrastructural facilities and amenities in the resettlement area of the basic minimum requirements for the displaced people though there are large

number of families affected. The respondents contend that they have provided for more than the required infrastructural facilities and amenities and more specially that in this case all the affected persons have not been dishoused from their residential premises in their villages.

18. The petitioners contend that Rule 4 of the Land Acquisition (Companies) (Rules) 1963 framed under the Land Acquisition Act (LAA) for acquisition of lands for companies was to be followed before the issue of notification u/s 32(2) of the MID Act upon negotiations with persons interested and inquiry into the lands sought to be acquired. This includes the requirement of sites when no alternative suitable site could be found except the land to be acquired. The petitioners also contend that prior to the said notice, the notice u/s 11(1) of the Rehab Act must be issued. The respondents contend that acquisition under the MID Act rules out acquisition process under the LAA and its derivatives.

19. The petitioners contend that certain other lands could have been better acquired. They made representations in that behalf. A meeting is stated to have taken place with the Deputy Chief Minister showing alternate lands. 5 different lands were considered in the TFR of respondent No. 7 itself. The petitioners contend that only barren land was to be chosen. However in that region no land has been shown even by the petitioners to be barren land. The petitioners themselves gave details of alternate lands under their letter dated 3/11/2008. Counsel on behalf of all parties argued upon the availability and non availability of land. Despite reliance upon Google map as well as Regional Plan of the Mumbai Metropolitan Region titled "landwise plan" and the plan of the Urban Development Department, the petitioners have not been able to show us any alternative land better suited for the public purpose of putting up a power project. The respondents claim that a land near coastline would be required as the raw-material required for the power project, more specially coal, could be brought in from the sea and estuary or Amba River that makes only the acquired lands suitable for such accessibility.

20. The petitioners have also made grievance about the facts of certain joint measurements which was taken on 11/6/2010 was not done as per law in as much as notices were not issued in that regard and panchanama was not filed. It is argued on behalf of the petitioners that the joint measurements should have been done after the notice u/s 32(2) of the MID Act is issued and before the notice u/s 32(1) is issued.

21. The petitioners further contend that the acquisition would have environmental repercussions. They claim that the Environmental Clearance (EC) of the Ministry of Environmental & Forests (MoEF) has not been obtained as required under the Environment Protection Act (EP Act) and notifications made thereunder. Whereas the petitioners contend that the latest notification of 2006 under the EP Act applies and remains uncomplied as per its letter and spirit, respondent No. 7 would contend that an earlier notification of 1994 which was applicable when respondent No. 7 made its application for EC holds good and has been sufficiently complied.

22. The respondent No. 7 applied to respondent No. 5, Maharashtra Pollution Control Board (MPCB) for obtaining EC on 4/7/2006. The notification came to be issued in that behalf on 14/9/2006. The petitioners accept that a public hearing for the project under acquisition was held on 20/2/2007. The petitioners contend that this should have been held before the environmental clearance is obtained by respondent No. 7. Consent of MPCB has been obtained on 23/3/2007 by respondent No. 7. In its letter dated 13/4/2007 addressed to the MoEF, MPCB has submitted a report of the proceedings of the public hearing held on 20/2/2007 with regard to the environmental issues. An application is stated to have been made by respondent No. 7 on 26/6/2007 for EC to MOEF. EIA & REIA report was submitted by respondent No. 7 along with that application. The petitioners contend that EIA & REIA reports could not have been submitted before an application made to Expert Appraisal Committee (EAC), but no such application was made. A presentation is stated to have been made by respondent No. 7 to the EAC of MoEF on 11/9/2007 and then on 13/10/2008.

23. Ms. Singh on behalf of the petitioners argued that u/s 7(1) of the EIA Notification 2006 the stipulated process for EC, which was to be scrupulously followed, was not followed. The EAC had not inspected the site. The terms of references of the EAC were not shown in the application. No public consultation was held. The final EIA Report, which must be after inspection of the site, has not been submitted and hence EIA report does not comply with the stipulated norms and is accordingly flawed.

24. The petitioners also contend that the entire exercise has been undertaken for a private company. The acquisition is not in public interest. It is to benefit the private company and hence is in colourable exercise of the powers of the Government.

25. The petitioners have also taken exception to the fact that not only private land, but 146 acres of the Government land is also sought to be acquired for the power project and the No Objection (NOC) of the Government has not been obtained.

26. The petitioners have relied upon the initial letter of the SLAO dated 10/1/2007 showing that the land has not been converted from green zone to agricultural zone as per due legal procedure.

27. The petitioners have similarly relied upon the letter of the Forest Department that the order of this Court dated 6/10/2005 contained in the judgment in WP No. 3246 of 2004 has not been complied and has been so reported by the Forest Department by its letter dated 1/12/2010 regarding the mangroves on the land to be acquired and the petitioners have also relied upon the letter of the SLAO dated 19/12/2011 stating that no Social Impact Assessment Study is done.

28. Respondents 1 and 3 on behalf of the State Government have set out the entire process followed and the procedural steps taken by the Government upon the MOU executed by the Government since 4/4/2005 culminating in the MoEF clearance on

9/12/2009 which demonstrates the approval of the Government for acquisition of its land. Further the steps shown to have been taken by the Government under MID Act as also the Rehab Act show due legal process followed.

29. Upon reading of the petition and considering the arguments on behalf of the petitioners, the ambit of the grievance of the petitioners are required to be enumerated and considered. It will have to be seen whether these grievances, even if accepted, constitute mere irregularities which can be remedied, corrected or waived or are illegalities which would vitiate the entire acquisition.

30. The grievances are as follows:

(i) DPR was not submitted by respondent No. 7 to the Government within 6 months - it was submitted much later.

(ii) Preliminary inquiry prior to acquisition was not done - Public Hearing is admitted to have been undertaken later.

(iii) TFR contains false and erroneous information of the land sought to be acquired - That is indeed applicable to the coastline being covered with mangroves.

(iv) Notification u/s 2(g) of MID Act was issued prior to the green zone being changed into industrial zone under MRTP Act; it had to be issued if the land to be acquired was converted to industrial use. - the petitioners accept that once the procedure of conversion of green zone into industrial zone is complied under MRTP Act the land which would be industrial land could be acquired.

(v) No notice was issued to affected persons upon the notification u/s 2(g) - notice has been issued after further notifications.

(vi) NOC of the Government for acquisition of Government land has not been obtained - Respondents 1 and 3 on behalf of the State Government accept the acquisition and have shown that the procedure under all the necessary legislations have been followed and the necessary permissions issued.

(vii) Notice u/s 32(2) of MID Act was issued to some and not all of the landholders on 5/4/2008 - petitioners have not shown how other landholders being the petitioners were on the acquired lands when notice to others were issued, but they were left out.

(viii) Notice u/s 11(1) of the Rehab Act was required to be issued prior to notice u/s 32(2) of the MID Act which was not done - indeed there is difference of four months in the issue of notices and notice under the MID Act has been issued prior to the notice under Rehab Act.

(ix) The number of persons who would be affected by a project are required to be identified when the suitability of the land is considered prior to the issue of notification u/s 32(2) of the MID Act. The respondents have not stated how many persons would be affected. The petitioners have stated that 904 landholders would be affected - this has not been substantiated by any revenue records. Only such documents could have shown whether the persons who have consented to and accepted the package of amenities offered by respondent No. 7 are in a minority or whether a majority of the persons are left out of the package.

(x) No hearing was given after issue of notices u/s 32(2) of MID Act. The petitioners had submitted their objections relying upon the objections of the Gram Sabhas representing them. Consequently, notice u/s 32(1) was issued without complying with the mandatory requirements - the most essential mandatory requirement is the aspect of hearing for which notice is admittedly given to some landholders. 67% of the villagers have already accepted the package of amenities offered by respondent No. 7.

(xi) Public hearing was held on 20/2/2007 (admitted in para 8 of the petition). This public hearing was not held after application of respondent No. 7 was made to MoEF under EC, but was held even prior to the application being made. - this public hearing was held after application of respondent No. 7 to MPCB was made on 4/7/2006 and prior to clearance granted by MPCB. The report of the public hearing is annexed to MPCB's letter dated 13/4/2007 sent to MoEF consequent upon its consent given on 23/3/2007.

(xii) The EIA notification dated 14/9/2006 is applicable to the project of respondent No. 7 and not the earlier notification dated 27/1/1994. Application is made by respondent No. 7 for EC to MoEF even before submitting the application to EAC. The representation made to EAC is made without inspection of the site by EAC and without any public consultation held by it. EIA has submitted its report, but not its final EIA report - respondent No. 7 contends that the Environmental Clearance for the power plant to be set up is covered by the EIA notification dated 27/1/1994 which is saved by the notification dated 14/9/2006 of the MoEF. The respondent No. 7 claims to have commenced the process of Environmental Clearance on 14/7/2006 by their application made to MPCB. The notification dated 14/9/2006 is issued later and hence not applicable. The petitioners have not shown how the notification dated 27/1/1994 is not complied. Ms. Gayatri Singh contended that the application to MPCB has nothing to do with the MoEF clearance. How that is so has not been shown. The MPCB deals with the environmental aspects. Of course, the actual application to MoEF itself for environmental clearance was made by respondent No. 7 on 26/6/2007. Hence it is contended by Ms. Singh that the four stages contemplated under the circular dated 14/9/2006 would be applicable to such an application. However, public hearing has admittedly been held on 20/2/2007 which would not be otherwise contemplated under an application made to MPCB, if that would have nothing to do with environmental clearance. Hence in this case when a public hearing is held another public hearing or public consultation under the third stage of the notification dated 14/9/2006 must be taken to have been included therein.

(xiii) The acquired land falls under ecologically sensitive area where thermal plants would be set up - the EC is, therefore, material to be obtained within the parameters of law.

(xiv) The Gram Sabhas have opposed the acquisition and not given their "No Objection". The letter of the Gram Panchayat showing its NOC dated 25/6/2009 is fabricated - No particulars of the gross charge of fabrication are provided. The Gram Sabhas have no locus under any of the Statutes under which the acquisition is made to represent the landholders or the villagers.

(xv) Social impact assessment of the project in terms of Rule 4 of the National Rehabilitation and Settlement Policy 2007 has not been done - More than the required infrastructural facilities and amenities have been provided to the project affected persons as shown by respondent No. 7 and higher than the market value of the land has been given as compensation as shown by respondent Nos. 1 to 3.

(xvi) It is ignored that some part of the acquired land falls under irrigation project - under the National Policy there is no bar to acquiring irrigated land, but that is required to be kept to the minimum.

(xvii) The suit land is rich agricultural land cultivated by the petitioners and also has mangroves - both these features cannot be on a single land. The mangroves would be only near the coastline. These would certainly have to be protected as per the law laid down by this Court in the judgment in WP. No. 3246 of 2004 dated 6/10/2005. The mangroves are shown in the Google map produced by the petitioners. The agricultural use would be converted to industrial use which would be acquired by the industrial body in accordance with law for the public purpose of generating power.

(xviii) No detailed project report was submitted and hence the cumulative effect of the acquisition has not been considered - It has since been submitted.

(xix) Preliminary inquiry about whether alternative land is available was not carried out - four alternative lands have been shown in the TFR of respondent No. 7 itself.

(xx) Alternative lands were not accepted though the petitioners gave details of other lands and the Deputy Chief Minister held a meeting issuing directions - The petitioners have been unable to show us any other land in the vicinity which would be equally feasible for the power project.

(xxi) Joint measurement is shown merely by photographs of the hearing. Such joint measurement is impermissible - the photographs produced by the respondents show hearing given to a number of persons. Measurement is admittedly carried out as shown in certain photographs and as reflected in the GR dated 17/3/2006 upon which the petitioners rely. Joint measurement implies and necessitates a joint effort of parties. An uncooperative party would cause only unilateral measurement to be taken.

(xxii) Notice for joint measurement was served upon on 273 landholders as against 906 - The admission of the service of the notice shows that the procedure is followed. In the absence of documentary evidence of 906 persons claiming to be landholders of villages Dherand and Shahapur, the objection about the majority of the landholders not being served notices cannot be seen.

(xxiii) Joint measurement was done though belatedly and not immediately after notice was issued u/s 32(2) of MID Act. Joint measurement was not done before notice u/s 32(1) was issued - the State has contended that there was an untoward incident when the initial joint measurement was to be taken and hence permission for the satellite measurement was granted.

(xxiv) The satellite mapping by remote sensing which was done postulates lack of joint measurement having been done - the respondents admit that traditional joint measurement has not been done except as stated in the GR dated 17/3/2006. Which other conditions have to be complied for satellite mapping is not shown.

(xxv) Efforts must be made only to acquire arid and fallow land - the petitioners have not been able to show the Court also which alternative land is arid and fallow which could be acquired - five alternate sites were shown by respondent No. 7 in its TFR and four sites are stated to have been identified by the petitioner and informed to the office of the Deputy Chief Minister by their letter dated 3/11/2008. One site has been admitted to be inspected on 17/2/2010, but could not be accepted as it is to be acquired by a Shipbuilding Company.

(xxvi) The mangroves in the acquired land are identified in the Google map. The petitioners have relied upon the Google map showing the mangroves which is contrary to the order of this Court with regard to mangroves. - The mangroves would certainly be required to be protected under this order on the judgment dated 6/10/2005 in Writ Petition No. 3246/2004.

(xxvii) The area of acquisition is far in excess of the need for the thermal power project. The thermal power project is indeed of upto 1600 MW capacity - respondent No. 7 has claimed that they have made provision for increase of the capacity if permitted in accordance with law in future.

(xxviii) The land required to be acquired for a thermal power plant of 1600 MW is 520 acres and for a thermal power plant of 2400 MW is 792 acres as per the CEA Report relied upon by the petitioners - the initial application for environmental clearance was for 1600 MW of power plant. This is extendable to an additional 800 MW. The area requirement of the power plant is stated to be computed by optimisation of proposed layout designed as per the guidelines of the CEA report of 2007. Respondent No. 7 contends that the area of the power plant is within the new guidelines of CEA Report dated September 2007 - 150 acres under the Coastal Regulation Zone (CRZ) consisting

of mangroves and another 150 acres of the township (Gaathan of these villages) can be included. The total area acquirable would, therefore, be 891 acres. 1200 acres are sought to be acquired. The persons living in the town/village are allowed to continue to live in their residential premises under the project. Hence though the land of 150 acres of township is acquired it is for the benefit of the residents of those villages. The other 150 acres which fall under CRZ/mangroves must certainly be protected. Respondent Nos. 1 & 3 may need to reconsider the acquisition of a part of the acquired land to the extent of 309 acres.

(xxix) No proper identification of persons is done and compensation is paid to wrong persons - the petitioners may have a claim against the persons who have been compensated in the place and stead of rightful claimants.

(xxx) The respondent No. 7 has arbitrarily arrived at the area of 150 acres under CRZ - any land falling under CRZ and/or mangroves which would be on the coastline would deserve protection by this Court.

(xxxi) Statements of only 23 persons have been recorded from Shahapur village which deal with the issue of compensation. The claim of respondent No. 7 that 260 persons have supported the project is stated to be without disclosing the names - respondents 1 and 3 have shown how the compensation has been paid by them through the funds of respondent No. 7 aggregating to sum of Rs. 135 crores. The petitioners have not shown which persons entitled to ownership rights have been left out.

(xxxii) Certain objections in a certain letter of one Shramik Mukti Dal on behalf of the petitioners dated 21/4/2007 are not considered - these were after the personal hearing of 20/2/2007.

(xxxiii) The price payable to the landholders has been arbitrarily fixed in the rehabilitation package of respondent No. 7 - the respondents claim that Rs. 20 lakhs per acre is being paid to the landholders which is more than market value for such claims. The petitioners have not alleged that the rehabilitation package offered by the respondent No. 7 is inadequate.

31. From the above enumerations it could be seen that the petitioners have sought to make grievances of the slightest deviation of procedure. They have claimed a right of public hearing upon each of the notifications issued and steps taken. Though they have admitted the public hearing dated 20/2/2007, the petitioners have claimed that no hearing was given and no notice was issued as mentioned under the aforesaid legislations.

32. Since the main grievance of the petitioners is with regard to the notices to be issued under the MRTP Act, the MID Act and the Rehab Act the provisions of these statutes are required to be considered, the relevant portions of which run as follows:

Section 16 of the MRTP Act:

16. Procedure to be followed in preparing and approving Regional Plans

(1) Before preparing any Regional plan and submitting it to the State Government for approval, every Regional Board shall, after carrying out the necessary surveys and preparing an existing-land-use map of the Region, or such other maps as are considered necessary, prepare a draft Regional plan and publish a notice in the Official Gazette and in such other manner as may be prescribed, stating that the draft Regional plan has been prepared. The notice shall state the name of the place where a copy of such plan shall be available for inspection by the public at all reasonable hours mentioned therein and that copies thereof or any extract therefrom certified to be correct shall be available for sale to the public at a reasonable price and invite objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice, such date not being earlier than four months from the publication of the notice.

(2) The Regional Board shall refer the objections, suggestions and representations received by it to the Regional Planning Committee appointed u/s 10 for consideration and report.

(3) The Regional Planning Committee shall, after giving a reasonable opportunity to all persons affected by the Regional plan of being heard, submit its report to the Regional Board together with all connected documents, maps, charts and plans within such time as may from time to time be fixed in that behalf by the Regional Board.

(4) After considering the report of the Regional Planning Committee, and the suggestions, objections and representations, the Regional Board shall prepare the Regional plan containing such modifications, if any, as it considers necessary, and submit it to the State Government for approval, together with the report of the Regional Planning Committee and all connected documents, plans, maps and charts.

Section 18 of the MRTP Act:

18. Restriction on change of users of land or development thereof -

(1) No person shall on or [after the publication of the notice that the draft Regional plan has been prepared or the draft Regional plan has been approved], institute or change the use of any land for any purpose other than agriculture, or carry out any development in respect of any land without the previous permission of the Municipal Corporation or Municipal Council, within whose area the land is situate, and elsewhere, of the Collector.

Section 20 of the MRTP Act:

20. Revision or modification] of Regional Plan -

(1) If the State Government at any time after a Regional plan has come into operation, but not earlier than ten years therefrom is of the opinion that revision of such Regional plan is

necessary and there is no Regional Board for the Region to which plan relates, to undertake such revision, the State Government may constitute a Regional Planning Board u/s 4, or Regional Board may, with the previous approval of the State Government, also revise the Regional plan; and thereupon, the foregoing provisions of this Chapter shall, so far as they can be made applicable, apply to the revision of the Regional plan as those provisions apply in relation to the preparation, [publication of notice] and approval of a Regional plan.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, at any time after a Regional Plan has come into operation, make any modification in such plan in the manner hereinafter provided if in its opinion such modification is necessary for the balanced development of the Region for which such plan has been prepared and approved.

(3) For the purpose of modifying a Regional Plan under subsection

(2) the State Government shall publish a notice in the Official Gazette announcing its intention to make the modification specified in the notice and invite objections or suggestions from any person with respect to such modification in writing with reasons therefor within such period as may be specified in the notice. The notice shall also be published in at least one newspaper having wide circulation in the Region and in such other manner as the State Government may think fit in the circumstances of each case.

(4) After considering the objections and suggestions in respect of the draft modification under sub-section (2), the State Government may approve the modification of the Regional plan with such amendments, if any, as it may think fit, and shall publish a notification in the Official Gazette, stating that the modification of the Regional plan specified therein has been approved. The notice shall also state the place where a copy of modifications to the Regional plan may be inspected at all reasonable hours, and shall specify therein a date on which the modification of the plan shall come into operation.]

33. Hence, there is a requirement of publishing a notice in the official gazette whilst preparing a regional plan. Inspection of the plan is given to the public. Objections and suggestions are invited from the public. These are sent to the Regional Planning Committee. The Committee affords a hearing (reasonable opportunity) to the affected persons, submits its report based upon which the regional plan is prepared. This would show the user of the land. The user cannot be changed without the permission of the Planning Authority. The regional plan may be revised or modified, if necessary, for which a notice in the official gazette as well as in one newspaper must be published, objections and suggestions invited and considered.

34. The MRTP Act, therefore, contemplates hearing of objections and suggestions. Subject to that the regional plans are prepared and altered.

Section 32 of the MID Act:

(1) If, at any time in the opinion of the State Government, any land is required for the purpose of development by the Corporation, or for any other purpose in furtherance of the objects of this Act, the State Government may acquire such land by publishing in the Official Gazette a notice specifying the particular purpose for which such land is required, and stating therein that the State Government has decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under sub-section(1), the State Government shall by another notice call upon the owner of the land and any other person who in the opinion of the State Government may be interested therein, to show cause, within such time as may be specified in the notice, why the land should not be acquired. [The State Government shall also cause public notice to be given in the manner laid down in section 53 and in the Official Gazette.

(3) After considering the cause, if any, shown by the owner of the land and by any other person interested therein and after giving such owner and person an opportunity of being heard the State Government may pass such orders as it deems fit.

(4) When a notice under sub-section (1) is published in the Official Gazette the land shall on and from the date of such publication vest absolutely in the State Government free from all encumbrances:

[Provided that.....]

(5) Where any land is vested in the State Government under sub-section (4), the State Government may by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the State Government may take possession of the land, and may for that purpose use such force as may be necessary.

(7) Where the land has been acquired for the Corporation or any local authority, the State Government shall, after it has taken possession thereof, by notification published in the Official Gazette. transfer the land to the Corporation or that local authority, as the case may be, for the purpose for which it was acquired, and the provisions of section 43-IA shall apply to any land so transferred.]

Section 32, therefore, provides for a notice to show cause as also a public notice in the official gazette, considering the cause shown, followed by the notification in the official gazette of the intent of the State to acquire the land specifying the purpose of acquisition by which the acquired land vests in the State, necessitating the person whose land is acquired to deliver possession thereof to the State and by which the State is empowered to take possession of the acquired land which stands transferred to the State upon a

notification published in that behalf. The notice u/s 32(2) would, therefore, precede the notice u/s 32(1) of the MID Act.

Section 11 of the Rehab Act:

11. Areas of affected and benefited zone to be notified:

(1) The State Government shall, in respect of a project to which this Act applies, by notification in the Official Gazette -

(a) specify, the villages or areas, if any, which are likely to be in the affected or benefited zone of such project;

(b) specify, provisionally the area of holding in such villages or areas, if any, to which restrictions specified in section 12 shall apply.

(2) Such notification shall be published in the villages or areas which are likely to be the affected and benefited zones, by beat of drum and by affixing a copy of the notification in some prominent place or places in the zones, and in the village Chavdi and in the office of the Panchayat, if any, and also in the office of the Tahsildar and Collector.

Section 13 of the Rehab Act:

13. Declaration of areas in affected or benefited zones:

(1) The State Government shall, by notification in the Official Gazette and also by publication of such notification in the manner provided in sub-section (2) of section 11, declare -

(a) the extent of area which shall constitute the area of affected zone under the project;

(b) if the project is an irrigation project, the extent of area which shall constitute the area of benefited zone under the project;

(c) which of the slabs mentioned in Part II of the Schedule shall apply to such project for the purposes of acquisition of land in the benefited zone.

(2) Before publishing a notification under sub-section (1), the Collector shall give a public notice inviting objections or suggestions in respect of the lands falling under clauses (a) and (b) of sub-section (1), by publishing in the manner specified in sub-section (2) of section 11 and also in the Official Gazette and in one daily newspaper in the Marathi language circulating in the local area comprising such villages and areas of affected and benefited zone. Any person interested in the land in such areas may make, objections or suggestions, if any, to the Collector within 30 days from the date on which such public notice is published by beat of drums in the village or area concerned or the date on which it is published in the newspaper as aforesaid, whichever is later; and the Collector shall,

with all reasonable despatch, forward any objections or suggestions so made together with his report in respect thereof to the State Government and on considering the report and the objections and suggestions, if any, the State Government may pass such order as it deems fit.

35. u/s 11 the area to be benefited and affected by the acquisition are to be notified by publication in the official gazette. The Collector has to invite objections and suggestions to the notified areas by a public notice u/s 13 (2), which may be given by interested persons and which have to be forwarded by the Collector to the State Government. Therefore, the extent of the area of the affected zone is to be published u/s 13(1).

36. The notification dated 27/1/1994 for obtaining EC under the EP Act governing respondent No. 7 at the time it made its initial application requires public hearing to be provided, which was admittedly held on 20/2/2007.

37. What essential actions that have transpired can be seen from the following short chronology relating to the hearing to be afforded to the persons affected by the acquisition. The initial application was made by respondent No. 7 for Environmental Clearance on 4/7/2006. Notice u/s 2(g) of MID Act was issued on 9/11/2006. Public hearing was held on 20/2/2007. Notice u/s 32(2) of MID Act was issued on 5/4/2008. Certain farmers raised objections on 9/5/2008 personally or through their Gram Sabhas. Joint measurement has been carried out by 11/6/2010. It would have to be considered whether this chronology of the essential actions of the respondents following the legal procedures would show sufficient compliance of law.

38. The concept of issuing notices to put the concerned persons to knowledge of the fact of the Government taking over their land is essentially the same under the MRTP Act, the Environment (Protection) Act, the MID Act and the Rehab Act. The cause shown or suggestions made with regard to change of user has to be considered under the MRTP Act.

39. Show cause notice is required to be issued under MID Act to show cause why the land should not be acquired. Public hearing is required to be given under the EP Act for considering the claims of parties for breaches of environment protection. Objections and suggestions of project affected persons have to be considered under the Rehab Act. Hearing of affected persons whose lands are acquired is a must for any acquisition. For a single project hearing as contemplated in the MRTP Act, MID Act, Rehab Act and EP Act may be given at one time. Separate hearings are not mandatorily required if they are to be given under the provisions of separate statutes laying down the prescribed procedure relating to a single acquisition sought to be made. The claim for hearing is indeed the most vital of the requirements. Indeed in a project of the magnitude shown by the petitioners themselves which falls within the parameters of the various aforesaid legislations requiring various applications to be made, permissions to be obtained and reports to be filed, the procedure contemplated thereunder would be substantially

required to be followed to give the paramount right of natural justice to those affected thereby.

40. The Court must see the substance of an action and not be carried away by its form. The Court would see that substantive justice is done and that there is substantial compliance with the procedure established by law. That is seen to have been done in this case.

41. Mr. Aney rightly contended that the petitioners must show substantive requirements not having been complied by any of the respondents and that mere allegations of irregularities of whether or not notices were issued or actions taken prior to or after certain other procedures required to be followed is not sufficient to maintain an action.

42. The petitioners admit that the notice of hearing was issued and hearing was given to some landholders. The petitioners have not shown who were those landholders. The petitioners claim to be 70% of the landholders in the acquired land but have not shown how such arithmetical calculation is made. The respondents contend that 67% of the landholders have been not only heard, but have accepted the respondent's package of amenities and have been paid compensation. This would not only suggest, but show compliance with the requirements of natural justice contemplated in the procedural requirements of the issue of notice and the hearing to be held. If this procedure as contemplated by law is admittedly carried out or is shown to have been carried out, new applicants and further claimants cannot set at naught the procedure which has been duly followed as that would endlessly make the acquisition proceedings in terminate resulting in abuse of process of law.

43. The seminal requirement for challenge by certain villagers as petitioners is to show their title to the land sought to be acquired. Unless that is done, other inquiries about the rehabilitation package or the authorities having consented need not be gone into. Similarly once a public hearing is granted, later letters, claims, allegations cannot be entertained in a petition.

44. The Government has shown how the compensation under the consent agreements entered into by the various landholders, which show voluntary acquisition by consent and which is inconsistent with the conventional compulsory acquisition, is in excess of the market value of the land shown in the ready-reckoner as also more than the sale instances shown by respondents 1 and 3. The total amount of the rehabilitation package is Rs. 2000 crores paid by respondent No. 7 to MIDC which in turn paid the landholders. Consent awards have been passed in respect of 1568 khatedars to whom compensation of 135.63 crores has been paid and possession of 271 hectors of land taken constituting 67.30% of the total land acquired by negotiation. The rehabilitation package offers one job per family in addition to the payment of Rs. 2 crores per village for enhancement of civic amenities, a 20 bed hospital etc. de hors the rules and guidelines. Since the township/gaothan of the aforesaid villages is not acquired, the Project Affected Persons

(PAPs) are not displaced. The process of taking possession of the acquired lands is stated to have started only from 3/8/2010. The notifications issued read with the rehabilitation packages and the consequent resettlement agreement show that the procedure under the Rehab Act has been also followed.

45. The respondents are stated to have granted various clearances and permissions to respondent No. 7 being the consent of MPCB dated 23/3/2007, CRZ clearance dated 21/2/2008, MoEF clearance dated 16/2/2008 (for Jetty), the clearance under the Forest Act dated 16/7/2009 and MoEF clearance dated 19/12/2009 (for the power plant). Of course, each of these clearances and permissions can be challenged, if it is given in collusion with respondent No. 7 without the authority of law or in excess of such authority or without complying with the mandatory provisions of law. The irregularities shown by the petitioners do not show how these clearances and permissions have been vitiated. The petitioners themselves having not shown their title clearly, the inquiry into the irregularities enumerated above need not be undertaken by the Court except as stated above.

46. The alternate lands shown by the petitioners which were inspected on 17/2/2010 (which the petitioners' claim was an eyewash) are stated to have been full of mangroves and hence could not be developed as per the order of this Court dated 6/10/2005 in Writ Petition No. 3246/2004 which lays down rules and guidelines with regard to the land and mangroves.

47. It is contended on behalf of all the respondents that the petition is grossly belated. Indeed if rehabilitation packages have been given to various landholders, which fact has not been denied, challenging the process de novo at a later stage would otherwise tantamount to abuse of legal process. The aforesaid chronology would show that even the initial opposition of the petitioners has been well after the date of the personal hearing on 20/2/2007. Objections by Gram Sabhas are of little consequence as not contemplated under any provision of law. The farmers' letter dated 9/5/2008 raising objections and petitioners' letter giving details of alternative land has been sent only on 3/11/2008 well after the process of acquisition was commenced under MID Act on 9/11/2006.

48. Given the delay, the irregularities pointed by the petitioners cannot be considered. Aside from the delay, the bonafides of the acquisition and the reasonableness of the settlement are both seen. The Court would certainly not be swayed by the case of the Government nor would it turn a Nelson's eye to any illegalities of substance even if the Government were to acquiesce in it. Despite the delay the Court must see whether the provision of any law has been breached, even if respondent No. 7 and the Government act in consort.

49. Upon hearing the aforesaid contentions of the parties, the only aspect which demonstrates a breach of any of the provisions of law is the utilisation of the coastal area admittedly under mangroves and so shown in the Google map though specifically stated not to have been at site in the Technical Feasibility Report (TFR). The aforesaid judgment

of this Court in WP No. 3246 of 2004 dated 6/10/2005 must govern the acquired land with full force. No concessions can be made in respect of that land. The contention of the respondents that the circular dated 27/1/1994 would apply may hold good only so far as the interpretation of the four stages set out in the notification dated 4/9/2006 is concerned. The applicability of the notification dated 27/1/1994 would not take the coastal area under mangroves outside the purview of the Environmental Clearance, whether granted or not by the requisite authority. We having made this position abundantly clear to respondent No. 7, respondent No. 7 has through its Counsel made a statement to Court that the protection of the mangroves would be "followed to the hilt". That statement would show that no part of the mangroves can be constructed upon for any cooling power or jetty or otherwise. We may mention that merely because the Power plant of respondent No. 7 requires accessibility through Amba River meeting the sea for obtaining the raw materials, more specially the coal, for running the power plant, the coastal land acquired for respondent No. 7 cannot be used against the provisions of any law. Such acquisition cannot, therefore, permit any construction whatsoever on the coastal land under mangroves. Such land would have to be set apart and left untouched without any exception and strictly in terms with the directions under the aforesaid judgment dated 6/10/2005 in Writ Petition No. 3246 of 2004, the clearance of the MoEF for the proposed power plant dated 9/12/2009 or the CRZ clearance dated 21/2/2008 notwithstanding. Similarly in accordance with Clause 7(1) A(a) of the CRZ Regulations, the buffer zone of 50 mtrs. from the mangroves would have to be maintained by respondent No. 7 as per law. Similarly 100 mtrs. of the coastline from the High Tide Line (HTL) or the width of the creek whichever is less would have to be also maintained by respondent No. 7.

50. Further the construction activities for the structures for intake of any cooling water or discharge of the treated waste water of the Thermal Power Plant, as sought to be done by respondent No. 7 cannot be allowed in the land under mangroves since no development can take place in the aforesaid area. Consequently, with regard to this aspect the contention of Ms. Gayatri Singh that the clearance of the MoEF for the Jetty dated 16/2/2008 is vitiated has substance. The areas covered by mangroves must, therefore, be "protected forest". Consequently the No Objection of the Deputy Conservator of Forest, Alibag dated 6/7/2009 in respect of the mangroves land only shows that the area does not fall under forest but would have to be left untouched. Even if these are handed over to respondent No. 7 under the acquisition, respondent No. 7 is obligated not to put up any construction whatsoever thereon even for the above purposes. We may mention that the area admittedly falling under mangroves and is seen to be so even in the Google map must be treated as such. Besides, the Regional Plan of the Mumbai Metropolitan Region titled "landwise plan" and the plan of the Urban Development Department show precisely the coastal areas covered by mangroves. Counsel on behalf of the respondent No. 7 showed us the proposed jetty points on the said plan. We may mention that there are 2 areas of land - not under mangroves, but are shown as mudflats. The jetties or any other construction of cooling towers etc. may be put up there leaving the mangroves untouched and untrammelled.

51. Hence, the following order.

ORDER

1. The challenge by the petitioners to the notifications issued in respect of the acquisition of the land for the thermal power project are rejected in view of the petitioners' not having shown their title to the lands claimed by them, the delay in filing the petition, as also upon seeing the curable irregularities, if any.
2. The challenge of the petitioners to the Environment Clearance of the Ministry of Environment and Forests, Government of India dated 9/12/2009 for the purpose of power plant as also the CRZ clearance of the Maharashtra Coastal Zone Management Authorities dated 21/2/2008 are sustained only with regard to the area under the mangroves.
3. The respondents shall not put up any construction whatsoever in the area under the mangroves on the coastline of villages Dherand and Shahapur and keep the area clear strictly in accordance with the judgment of this Court in Writ Petition No. 3246 of 2004 dated 6/10/2005 including the 50 mtrs. buffer zone required to be kept clear of all constructions under the CRZ Regulations and the aforesaid judgment.
4. Respondent No. 7 shall only be entitled to construct the jetties or any construction for any facility for intake of cooling water or outfall for discharge of treated waste water from its thermal power plant in the 2 portions of the areas not covered by mangroves but shown to be mudflats on the coastline of the aforesaid villages on the plan of the Urban Development Department and the Regional Plan of the Mumbai Metropolitan Region titled "landwise plan" used by the Chief Planning Division of the Mumbai Metropolitan Region Development Authority dated 23/9/1999 which are taken on record and marked "X" and "Y" respectively.
5. Respondent Nos. 1 and 3 may reconsider the acquisition in respect of 309 acres of land which, is shown to have been acquired in excess of the requirements of Respondent. No. 7.
6. Subject to the above, the acquisition is confirmed and the petition is disposed of.