(1996) 09 DEL CK 0077

Delhi High Court

Case No: C.W. No. 2556 of 1990

Baldev Singh Dhillon and Others		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Sept. 11, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Land Acquisition Act, 1894 - Section 4, 5A, 6

Citation: (1996) 64 DLT 329

Hon'ble Judges: Mahinder Narain, J; J.B. Goel, J

Bench: Division Bench

Advocate: P.N. Lekhi and Subhash Mittal, for the Appellant; Geeta Luthra, Pinky Anand and V.K. Shelendra, Ishwar Sahai Sumit Bansal, Rajesh Goel and Tarun Johri, for the Respondent

Final Decision: Allowed

Judgement

Mahinder Narain, J.
The petitioners in this writ petition impugn the notifications under Sections 4 and 6 of the Land Acquisition Act (hereinafter referred to be as "the Act"), that have been issued by the Delhi Administration, seeking to acquire the land which is said to be owned by the petitioners.

2. The petitioners attack the legality and validity of the notification for acquisition of their land on various ground :

(i) One set of grounds is based upon the breach of the provisions of the Act under which the notifications have been issued;

(ii) Other set of grounds is that on the facts and in the circumstances of the instant case the notifications could not have been issued as no plans for development of the area covered by river Yamuna have beenprepared.

(iii) The notifications are also attacked on the ground that the manner and the method postulated by the provisions of the Act dealing with the notifications for acquisition, have not been adhered to in the instant case.

3. It is also contended that a large number of notifications have been published in the purported exercise of power under Sections 4 and 6 of the Act, which are at variance with each other; that the notifications which have been published, have not been published on the date on which they are asserted to have been published--in other words, there is a fraud on the statute in the matter of the publication date on the said notifications which, in turn, affects the statutory rights of the petitioners u/s 5A of the Act.

4. The notifications which are published in the Official Gazette under Sections 4 and 6 of the Act read as under :

LAND AND BUILDING DEPARTMENT

NOTIFICATIONS

Delhi, the 23rd June, 1989

No.F; 9(l)/89-L & B/18 577--Whereas it appears to the Lt. Governor, Delhi, that the land specified below is required by the Government at the public expense for a public purpose, namely, the ''Planned Development of Delhi.

Now, in pursuance of the provisions of Sub-section (1) of Section 4 of the Land Acquisition Act, 1894, it is hereby notified, to all whom it may concern, that land measuring about 3500 hect. (three thousand five hundred) Hectares staring from a point 1 km. up-stream Wazirabad Barrage road along eastern Yamuna marginal bund till it meets the boundary of Union Territory of Delhi then along with boundary of Union Territory up to point it meets newly constructed NOIDA Bridge then along the Northern Boundary of the Bridge up to Agra Canal then along the eastern boundary of Agra Canal up to Okhla Head-Works then towards north along the approach road to the Head-Works and along the Eastern Boundary of regularised unauthorised colonies of Batla House, Jogabai Village, Zakir Nagar, Khinzerbad village and then along the Eastern Boundary of Women Polytechnics, C.R.R.I. & Kalindi Colony till it meets Ring Road then along the Eastern Boundary of Ring Road till it meets Indraprastha Power House then along the Eastern Boundary of Power House then along the bund up to the point it meets Old Rly. Bridge and then along the road joining Ring Road crossing near Monkey Bridge then along the Ring Road up to 1 km. up-stream Wazirabad Water Works along the bund up to 1 km. then along the imaginary line running parallel to Wazirabad Barrage on the Northern side up to starting point excepting the following land :
(a) Government land.

(b) Land already notified u/s 4 or u/s 6 of the Land Acquisition Act, 1894 is likely to be acquired under the provisions of the said Act for the purpose above stated.

In exercise of the powers conferred by the aforesaid section, the Lt. Governor is pleased to authorise the Officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that Section.

Any person, interested, who has any objection to the acquisition of any land in the locality, may within 30 days of the publication of the notification file an objection in writing before the Collector of Delhi.

Map showing the boundaries of land covered by this notification is available for inspection in the Office of the Collector, Delhi.

As is clear from the last paragraph of the notification no map was published in the Gazette.

5. The notifications which were published in the newspapers in English and in vernacular, have also been referred to. The notifications which appeared in the English newspapers under Sections 4 and 6 of the Act are reproduced herein below:

HINDI DAILY "HINDUSTAN"

THURSDAY 28TH JUNE, 1990

(TO BE PUBLISHED IN DELHI GAZETTE (EXTRAORDINARY) PART IV)

DELHI ADMINISTRATION : DELHI LAND & BUILDING DEPARTMENT

Dated: 22.6.1990.

NOTIFICATION

E9(l)/89-L&B/2/--Whereas it appears to the Lt. Governor, of Delhi that land is likely to be required to be taken by the Government at public expenses for a public purpose, namely for Planned Development of Delhi, viz. Channelisation of Yamuna river, it is hereby notified that the land in the locality described below is likely to be acquired for the above purpose.

This notification is made under the provision of Section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Lt. Governor is pleased to authorise the officers for the time-being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

The Lt. Governor, Delhi being of the opinion that the provisions of Sub-section (1) of Section 17 of the said Act applicable to this land,; is further pleased under

Sub-section 4 of the said section to direct that the provisions of Section 5-A shall not apply.

SPECIFICATION	
S.No. 1	
Name of Village: Madan Pur Khadar	
Total area (Big-Bas)	139-07
Kh.No.	Area
	Big-Bis
437	0-16
xx	xx
554/2	3-05
S.No. 2	
Name of village Khizrabad	
Total Area: 874 Bigha 04 Biswa	
228	3-03
229	8-06
xx	xx
371 to 375/29/1	14-14
S.No.3	

Name of village Behlol Pur Khadar	
Total Area 743-19	
31 min	5-05
32 min	20-09
xx	xx
148	11-19
S.No.4	
Name of village Chak Chilla	
Total Area : 1779 Bighas 01 Biswas	
1	217-11
2	18-12
xx	xx
43/19	3-19
Sl.No.5	
Name of village Kilokri	
Total Area 2228 Bigha 05 Biswa	

482/1	1-12
488/1	2-18
xx	xx
1088/1	9-04
S.No.6	
Name of village: Nangli Razapur	
Total Area: 2009 Bighas 10 Biswas	
1	172-06
2	8-13
xx	xx
156	291-07
S.No.7	
Name of village Okhla	
Total Area: 1660 Bighas 10 Biswas	
208	1-03
209	4-02
xx	xx
323	1235-03
S.No.8	

Name of village: Joga Bai	
Total area: 699 Bighas 2 Biswas	
166	11-17
175	19-07
xx	xx
475/266	2-07
S.No.9	
Name of village: Jasola	
Total Area: 1565 Bighas 02 Biswas	
306	3-07
307	1-03
xx	xx
474	249-00
475	134-07

SALE OF BY ORDER
DELHI ADMINISTRATION sd/-
(GEETA SAGAR)
JOINT SECRETARY (L&B)
DELHI ADMINISTRATION:DELHI

DIP-633/90.

6. The notifications which were published in the newspapers, were, according to the petitioner, corrected by a corrigendum, which corrigendum is reproduced below :

DAILY "HINDUSTAN" HINDI DATED 8TH JULY, 1990

DELHI ADMINISTRATION: DELHI

LAND & BUILDING DEPARTMENT

CORRIGENDUM

Notification published in this News Paper dated 28.6.1990 by Joint Secretary (L&B), Delhi Administration Delhi vide Notification No. R9(l)/89-L&B/2 dated 22.6.90, the portion before specification, may be read as under :

"No.F.9(l)/89/L&D/2: Whereas the Lt.Governor, Delhi is satisfied that the land is required to be taken by Government at the public expense for a public purpose, namely for "Planned Development of Delhi" viz. Channelisation of Yamuna river. It is hereby declared that the land described in the specification below is required for the above purpose.

This declaration is made under the provisions of Section 6 of the Land Acquisition Act, 1894, to all whom it may concern and the provisions of Section 7 of the said Act, the Collector of Delhi is hereby directed to take order for the acquisition of the said land.

A plan of the land may be inspected at the office of the Collector of Delhi."

BY ORDER

Sd/-

SEAL OF

(GEETA SAGAR)

DELHI ADMINISTRATION

JOINT SECRETARY(L&B)

DELHI ADMINISTRATION: DELHI

DIP-681/90

7. In order to understand what is involved in channelisation of River Yamuna as postulated by the said notification, it is necessary to know what is channelisation. Whereas a canal is necessarily man made, a natural river channel is not. Channelisation is the work of man, just like making a canal is the work of man. Canal making is resorted to take away waters of river from its channel, channelisation may mean deepening of the natural river channel or creating a new channel in the river bed, or its flood plains.

8. During the course of arguments in view of what is stated in the notifications for acquisition and in the Master Plan Perspective 2001, three things had to be explained by the Counsel for the respondents :

(i) How is river Yamuna to be made pollution free? (As this is stated in the Master Plan for Perspective 2001).

(ii) How is river Yamuna to be channelised? (This is the stated purpose of acquisition of land in the notifications under Sections 4 and 6 read together).

(iii) Is it correct to say that river Thames in London and river Silence in Paris have been channelised? (It is so asserted in the Master Plan Perspective 2001).

9. None of these three questions were answered, perhaps deliberately, as answers to these questions would have had adverse effect on the case of the respondents. The answers to these three questions were quite simple.

(i) River Yamuna is to be made pollution free by treatment of the drain waters discharged into it,

(ii) River Yamuna is to be channelised by making plans, maps, alignments, depth of flow charts of its course through the Union Territory of Delhi, working drawings etc., all drawn to scale;

(iii) River Thames has throughout centuries been navigable river. There is no need for deepening its channels.

10. These are the answers which flow from the information which has been gathered by me, and set out there below. Also indicated here below the sources from which the information has been gathered, so that either in this case, or in any other case, the information can be of use. I apprehend that had this information been given by the respondents, the hearing of the case would not have lasted as long as it did. If Counsel for respondents did not give this information regarding water treatment, or show us the plans drawn to scale in connection with channelisation of River Yamuna, not giving any information regarding channelisation of River Thames or River Silence , they must have had good reasons.

11. (I) Water Treatment: While dealing with the public health aspects of the sewage system, Vol. 16 of the Encyclopedia Britannica, 15th Edition, page 582, has this to say :

Public health aspects. Not surprisingly, the crude sanitary arrangements of Europe contributed to the spread of epidemics. John Snow, a 19th-century English physician, compiled a list of outbreaks of cholera that he believed had moved westward from India over a period of centuries, reaching London and Paris in 1849. Snow traced a London recurrence of 1854 to a public well, known as the Broad Street Pump, in Golden Square, which he determined was being contaminated by nearby privy vaults. This was a note worthy epidemiological achievement, especially since it

predated by several years the discovery of the role of bacteria in disease transmission.

When the public health dangers became apparent, Londoners first, and soon after other European city dwellers, were ordered to discharge wastes into the drainage system originally provided to carry storm-water runoff only. It might be said that here stream pollution had its birth, as the concentration of such an organic load on a river like the Thames at London was more than the stream could assimilate without nuisance. The resulting stench was such that burlap saturated in chloride of lime was hung in the windows of Parliament House in an attempt to kill the odours. That experience developed into pressure for the treatment of sanitary wastes. Similar treatment demands arose in the large cities of Germany, which had also experienced major waterborne epidemics. Such catastrophes have today been virtually eliminated by vastly improved sanitation of water and modern water-pollution control. In the infectious hepatIT is epidemic of 1955-56 in Delhi, India, a laxity in water-treatment techniques was shown to be the cause of the outbreak.

A major contributor to water pollution problems as they reached major intensity first in England during the early 19th century and in the United States and western Europe a little later was the Industrial Revolution, with its combination of concentration of population and industry. Few major industrial users of water, in their early years of development, paid serious attention to waste products that left the plant. Even today, approximately 50 percent of the total wood used in a modern paper mill goes into the industrial waste-water stream and must be removed by treatment of the waste water. Textile mills discharge some waste fibres and also frequently discharge multi coloured dyes.

DEVELOPMENT OF TREATMENT METHODS

Early treatment techniques simulated natural methods of purification. It was observed that moderate amounts of organic wastes discharged into a watercourse eventually went through a natural purification process. In time the receiving water, as well as the waste water itself, regained a status of natural purity. If too much organic matter was imposed upon a water-course, however, the water was badly degraded and would become a nuisance to sight and smell as well as become uninhabitable for fish and other aquatic life. Because of the absorptive capacity of the soil and the value of organic material as fertilizer an early attempt at disposal was that of sewage farming, the spreading of raw sewage on the land. This met with particular favor in the large cities of Europe and was employed in Berlin and Paris until relatively recent years. This practice was followed in the early years of experimentation in Britain, but soon gave way to methods of treatment in which the final solids removed from the waste water could be used for organic fertilizers or soil conditioners. Such methods included plain sedimentation and, later, Chemical precipitation or sedimentation aided by flocculation Chemicals.

Development of the trickling filter. Even these methods were insufficient in many cases and further treatment of the waste water was necessary. Again, observing nature, workers sought to expose the waste-water flow to oxygen from the air by various means. An early attempt consisted of filling a large tank with stones from three to eight inches in average diameter and flooding the interstices with the settled waste water. After contact of several hours, the tank was drained and much organic matter remained on the surface of the stones enmeshed in the zoo gleal (massive bacterial) growths that occurred there. Such a treatment scheme required several such tanks so they could be rotated on a fill-and-draw basis. Because of the labour involved with this manipulation and a desire for something better, the next big step was toward a so-called trickling or sprinkling filter. This was not a filter in the usual sense, but a large shallow concrete tank filled with medium-size stones, over whose surface the settled waste water was allowed to trickle, draining from the bottom of the unit. Such filters were operated intermittently so that air had free access to the zoo gleal growths that formed on the filter stones and accomplished the oxidization of material from the waste-water flow. Activated-sludge process.

During the years 1912-15, the British developed another process that proved to be still more effective in the removal of organic material from the waste water. Recognizing the trickling filter as merely a means of bringing together the organic matter in the waste water and air as a source of oxygen, British engineers reasoned that by releasing compressed air in a tank of waste water they could achieve a greater measure of control, and hence degree of treatment. They also observed that the circulation of some of the sludge gave a vast area for the same biological action that was going on in the trickling filter, by combining the organisms carried by the sludge, oxygen supplied by the incoming air, and new food supplied by the settled waste water entering the aeration tanks. By varying the amount of air and the amount of sludge returned to the process, higher levels of treatment could be obtained. Because the sludge was teeming with bacterial and associated biological life, the sludge was called "activated" and the process called the "activated-sludge process". It proved highly efficient and was rapidly adopted by cities around the world with severe treatment problems.

Modern Trends. A water-pollution control plant has been described as "a river wound up at one point," because a treatment plant accomplishes, within a few hours, what a river requires days or even weeks to do. In the 1970s nearly all communities needed increasing waste-water treatment; in addition to the greater load from growing populations and industrial activity, there has been a significant increase in most parts of the world in both the stringency and level of enforcement of water-pollution control laws. One result of this pressure has been a search for methods to increase the levels of treatment or, specifically, the removal of organic material from the waste water. Practices of the past have employed biological and physical processes because of their economy.

Chemical treatment. With the increased demands for treatment effectiveness, serious consideration is now being given to the return to Chemical precipitation methods. These methods were tried briefly in the 19th century; they were given up, however, because of high costs. The increased value placed by the 20th century on stream cleanliness tends to justify such higher costs and the treatment plant of the immediate future will probably include Chemical precipitation in addition to physical and biological processes.

Separate storm and waste-water sewers. Although most sewer systems still combine storm water and domestic waste water, it is generally recognized that separate systems are highly desirable. Where a combined system is used, heavy rainfall overloads treatment plants, with the result that untreated overflow becomes a source of pollution. Furthermore, where the two streams are kept separate, it is possible to handle each in accordance with the level of treatment required. One proposed method of handling storm run-off is that it be piped to holding reservoirs underground and gradually run through treatment plants.

Recycling. Even further, because of the exhaustion or near exhaustion of water supplies in some areas, there has been a major trend, particularly in the arid parts of the world, to treat waste waters to a level that will allow reuse of the water for various purposes. For many years such treated waters have been used for irrigation, industrial cooling, and certain other industrial processes. Studies are proceeding to reclaim water for many other purposes, with a growing likelihood of eventual reclamation and treatment to the level of drinking water. In the United States, the city of Dallas, Texas, is studying the possibilities of reuse because the city has developed virtually all of the fresh water sources within its reach. Many cities with similar problems, in the U.S. and elsewhere, will soon be studying reuse. The United States Government has been carrying on an intensive research program in this area for several years. It is clear that the relation between water supply and water-pollution control is growing steadily closer.

A Typical City Sewer System ; Washington, D.C. Modern urban sewage treatments can best be described by reference to a specific city. The Washington, D.C., system has many aspects typical of any large modern city, though its early history is not representative of many others. The town''s first bathtubs were installed in the White House and the Capital, for the members of Congress in the 1840s; in 1850 of the U.S. Congress authorized the Corps of Engineers of the U.S. Army to develop a city-wide water supply from the Potomac River. At this point Washington caught up with New York, London, and Paris, which were also encountering the problem of disposing of used water along with wastes. Washington''s solution was the same as that of other cities; the existing system of culverts and drains, built for street drainage only, was extended and developed into a sewer system for the disposal of domestic waste water from residences, Government offices, and businesses. The system followed the drainage pattern of the city street network and in general made a system of

pipes with a sewer available to each private property. At the same time, again in common with other cities, street drains were built to empty into the nearest surface water-course without any thought of degradiation of the water quality. This was in spite of the fact that an engineering study and report (1890) recommended that all extensions of the sewer system separate storm run-off from domestic waste water.

With continued growth of the city, the District of Columbia constructed in the first decade of the 20th century a series of intercepting sewers and a pumping station to lift the domestic waste water into an outfall line for discharge into the Potomac River sough of the city- At the same time pumping facilities were installed for the lifting of storm water drainage directly into the nearby An acostia River. It was impossible to keep domestic and storm flow completely separate, but practical separation was attempted.

With the accelerated growth of the 1920s, concern over pollution of the Potomac increased. The Potomac estuary had a remarkable ability to assimilate pollution because of the large "flats"'' on both sides of the river that were kept in a state of constant Circulation by tidal variations, but a study made by the Public Health Service in 1932 revealed that the river was in such a condition that low flow could bring about serious pollution effects. As a result. Congress decided to proceed with the construction of facilities for the treatment of waste water. This again was in line with decisions being made in many U.S. and European cities at the same period.

Treatment plant at Blue Plains, D.C. During 1934-38 a plant was constructed on the left bank of the Potomac at Blue Plains, D.C., to accommodate a flow of 130,000,000 gallons per day and serve a population of 650,000. Initially, with the help of the Federal. Emergency Administration of Public Works, money was allowed to construction of a plant that would remove 90 percent of the organic matter from the waste-water flow. That level of treatment was in accordance with the Public Health Service recommendation contained in the 1932 report. Instead of constructing the plant in accordance with that recommendation, the District of Columbia decided to eliminate the second step in the treatment and construct a sedimentation plant, generally known as primary treatment. The plant was able to remove about 36 percent of the organic matter when it went into operation in August 1938, but as the population load increased, accelerated by World War II, the plant was unable to maintain this level and year by year efficiency dropped until it was regularly under 30 percent.

During World War II, initial plans were made for the relief of the treatment burden, and by 1950 the District of Columbia had begun major construction to increase the capacity of the plant and make further plans for inclusion of secondary treatment.

Activated-sludge plant. The activated-sludge process pioneered in Britain had by now been widely tested. Washington constructed a high-rate activated-sludge treatment plant in anticipation of 70 percent removal of organic matter. While the

new plant brought a major improvement in the river, there was no real possibility of keeping up with the pollution burden, even though the plant grew to a capacity of 290,000,000 gallons daily. In the early 1970s the District planned to extend treatment to a much higher level--once more, a decision being forced on many cities of the United States, Europe, and Asia.

Coordination with surrounding areas. One of the awkward problems confronting city engineers of the 20th century in nearly all countries has been impossibility of isolating a metropolitan area from neighbouring regions. Rivers carry pollution from city to city, even country to country. In Washington the problem was encountered in a relatively mild form; much of the Maryland suburban area drains into Rock Creek and the An acostia River, which flow through the District of Columbia; to try to keep the two streams as clean as possible the District of Columbia and the Washington Suburban Sanitary Commission (of Maryland) entered into an agreement to handle each other''s flow at a reasonable cost. All the domestic waste water of the suburban areas is now connected into District sewers, with payments made to handle the waste waters. As part of the agreement, the Maryland Commission helps to finance both the construction and the operation of the District of Columbia Water Pollution Control Plant.

Other developments. With continued growth and rising pollution control standards of the 1960s and 1970s, Washington like most other major cities has been turning toward additional treatment, including Chemical treatment. One proposal calls for achieving so high a level of treatment that the Potomac estuary into which the effluent flows could be used as an emergency water source.

Another direction in which Washington had headed in company with many other modern cities is toward separation of systems. This is a tedious and expensive process, requiring piping changes on private property. Its long-range wisdom, however, is irrefutable. The redevelopment of certain major areas, such as southwest Washington, has given favourable opportunities for large-scale separation.

An important advance in financing improvements has been adopted by Washington : the sewer-service charge on all those served by the drainage system. This system has been followed more and more by drainage systems serving both municipalities and industry.

Since about 1959 the D.C. sewer system has been inter-connected with the areas in Maryland that naturally drain through the District via the Potomac River and major areas in Virginia related to the intercepting sewer serving Dulles International Airport near Herndon, Virginia. As a result of this connection the area served increased by 436 square miles in Maryland and 228 square miles in Virginia. The Metropolitan area in Arlington County and much of the Virginia suburban area adjacent to Arlington County are served by other treatment plants.

Present treatment facilities. At the District of Columbia Water Pollution Control Plant (see illustration) the raw waste water enters the plant pumping station and is treated in the following successive steps : grit removal, preliminary sedimentation, aeration, and final sedimentation. In addition, chlorine treatment may be given the flow prior to preliminary sedimentation or it may be given to the final effluent. With the first application, the effect of chlorine is to minimize odours from the sedimentation tanks. When fed to the final effluent, chlorine has a disinfectant effect.

The purpose of the sedimentation tanks, both preliminary and final, is to separate solids from the waste-water flow; the solids removed must be given further treatment. At the D.C. plant these solids are exposed to anaerobic digestion and dewatering on vacuum filters. The final product is a moist cake with approximately 70 percent water, suitable for land application as a soil conditioner. During the digestion of sludge, a gas consisting of approximately two-thirds methane is produced that is burned for heat for the plant buildings and to provide some power generation. The sludge gas has a heat value of about 600 BTU (British Thermal Units) per cubit foot and the quantity produced is about one cubic foot per person, per day. A sludge gas engine of 1,200 horsepower drives an 800-kilowatt generator for production of electric power. Initially, the power produced supplied about 95 percent of the needs of the plant, but with the growth of the plant, power requirements have increased rapidly and now the gas engine supplies only a minor proportion of the electric power. It supplies, however, through its jacket water-cooling system, a large amount of the heat necessary to maintain active biological digestion in the sludge digestion tanks.

The total cost of the plant exceeds $25,000,000 and the annual operation costs in the late 1960s approximated $2,500,000. Over 250 persons are employed in operation and maintenance. The full extent of the undertaking may be appreciated when the vast waste-water collection system serving property throughout the area is visualized. In the District of Columbia alone, over 1,700 miles of sewers serve this purpose, while 2,700 miles in the Maryland area give similar service to the properties of that jurisdiction. The maintenance of the system is a major activity, as 200 men are engaged in regular maintenance and minor construction related to the sewer system in the District of Columbia alone. Proper maintenance involves regular inspection of the lines and periodic cleaning to avoid difficulties that could cause great inconvenience and possibly property damage to those served by the drainage system.

Worldwide Sewage disposal Problem Sewage disposal in non-Western areas is progressing at a rapid pace. The growth of cities and industries has made it necessary for such areas to have public water supplies. The full advantages of a public water supply cannot be realized without a proper drainage system that will remove promptly the used waste water along with the wastes contributed by its use.

The advanced state of public health protection from persons living in an environment served by proper water and sewer service is properly credited to the advantage of these services.

Since World War II Japan has been converting from its outdated agricultural utilization of raw sewage to the modern water-carried drainage system. To build such a system in a metropolis like Tokyo with its population exceeding 11,000,000 is truly a herculean task. The traditional communal bathhouses of Tokyo neighborhoods eventually will be replaced by household plumbing systems. Thailand, India, Pakistan, and many countries on the African continent are following this pattern. Eastern as well as western Europe has its pollution problems; such densely populated countries as Romania, Czechoslovakia, Hungary, and Poland have intensive programs of water-pollution control under way. In areas where water is extremely short, such as Israel and South Africa, reclamation after full waste-water treatment is practiced. In Windhoek, South West Africa, approximately one-third of the waste water is circulated back to the domestic water supply; plans are being made to increase the return to 50 percent. This is accomplished by following the conventional methods of waste-water treatment with more refined techniques to restore the water to a completely satisfactory public-health quality. At the same time the Chemical characteristics of the water are improved, and hardness is reduced. The city of Bangkok, Thailand, is pursuing a gigantic program involving complete reconstruction of its water system and its sewer system along the most modern lines, including a high degree of recycling.
Future problems in the field include proper means of financing the construction and operation of sewer systems including such appurtenances as pumping stations and plants for the control of water pollution, but most significantly higher and higher degrees of waste water treatment. Research in progress in many countries of the world promises to achieve a high degree of reclamation, and even recycling at reasonable cost.

The control of water pollution is not dependent wholly on the civil and environmental engineers who customarily design the facilities for the collection and treatment of waste waters. For the intelligent operation of such structures, the cooperation of chemists, biologists, bacteriologists, and limnologists (freshwater scientists) has been considered essential for many years. Now, with the added emphasis on ecology and environment, the application of the principles of these broad fields of biology must also he included to meet the problems of the growing world population and its demands for a greatly improved environment.

(I have included the above subject matter in the judgment to ensure that persons concerned have requisite information about water treatment methods, and by referring to the encyclopedia, get in depth knowledge, by perusing the books in the bibliographic note).

II. Channelisation : Regarding river canalisation, this is what is stated in the Microsoft Encarta Encyclopedia :

River Canalisation. Formerly, when important rivers were found to be unnavilgable at certain points, shallow side canals running parallel to the river were built with pick and shovel so that vessels could bypass that part of the river and re-enter it at a more suitable point. With the advent of power machinery, this practice has been largely discarded in favor of canalisation of the river itself; that is, a river may be dredged at unnavilgable points and provided with dams and bypass locks that control the level of the river from end to end. Construction of 40 locks and dams on the Ohio River was completed in 1929; redevelopment, begun in 1955 to replace the current system with 18 high-lift locks, was completed in 1981. Canalisation of the upper Mississippi River from Minneapolis, Minnesota, to Alton, Illinois (just above Saint Louis, Missouri), was completed in 1939-40. In May 1954 the U.S. Congress authorised the federal Government to join with Canada in the construction of the St. Lawrence Seaway; as its share of the project, the U.S. built two canals, three locks, and various other improvements along the St. Lawrence River from Montreal, Que., to Ogdensburg, New York. Canalisation of the Arkansas River which includes 13 locks and dams and a 14-km (9-mi) canal linking the Arkansas to the White and Mississippi rivers, opened the river to navigation to Catoosa, Oklahoma, in 1970. The Tennessee-Tomblike Waterway, a 407-km-long (253-mi-long) project that was completed in 1984, includes five dams, ten locks, and a 72-km-ling (45-mi-long) canal linking the two rivers in Alabama, Mississippi, and Tennessee.

12. The above said portion of the Encarta indicates that in view of the existence of power machineries channel is made in the river itself by dredging the unnavilgable points of the river where the depth of water is inadequate and making provision for dams and bypass locks to control the level of the river water from end to end. If this is the intention of the respondents, we have not been told about it with reference to a map drawn to scale or even any other type of map. One thing which is clear to us is that when a perennial river like River Yamuna, which is almost two miles wide at some points in the Union Territory of Delhi is going to be deepened, the width of the river through which waters will flow is going to be reduced, as the river water is going to be made to flow through a much deeper channel than the one which exists to make, it suitable for river transportation.

13. As stated hereafter, ever since the aforesaid Notification, to date, no scheme of channelisation of River Yamuna or maps drawn to scale showing the areas which are going to be channelised has been shown to us despite the Delhi Administration and the Delhi Development Authority being asked several times to produce such a scheme or map, or both.

14. Canals: A Canals have been in existence in all the countries of the world. It is reported that even before the Christian era canals existed and served as means of navigation and communication for the Assyrians, Egyptians, Indians and Chinese.

The remains of a canal have been found near Mandali, Iraq, which date back to about 4000 BC. There is Grand Canal of China which is 1782-km-long, connecting Tianj in City (Tientsin) and Hangzhou (Hangchow), which was begun in the 6th century BC, and is still in use. Canals were built in France in the 17th century, called Briere, Orleans and Languedoc canals. Russia had also a system of canals which connected Saint Petersburg with the Caspian Sea. This canal was built in 18th century. A canal comprising of connection between lakes, rivers of about 87 km length, capable of accommodating oceangoing vessels, which connects Stockholm and Goteborg. It was completed in 1932. There was a canal Ludwig Canal, which joined the Danube with the Main and Rhine rivers, totalling about 177 km., and was built in 1932. In Germany also the Mittell and Canal system (467 km. long) was opened in 1938, which completed the east-west link in a system of about 11,265 km. of inland waterways, extending from the Dortmund-Elms Canal east of the Rhine to the Elbe north of Magdeburg.

15. The first canal in England was completed in 1134, during the reign of King Henry I; it joined the Trent and Witham rivers. Canal building in Great Britain and Ireland flourished in the late 18th and early 19th centuries. Two of the most not able canals of that period are the Grand Canal in Ireland (begun 1756), which extends 134 km (83 mi) east-west between Dublin and the Irish town of Shannon Harbour on the Shannon River, and the Caledonian Canal (completed 1847), a 97.3 km-long (60.5 mi-long) waterway including 37 km (23 mi) of canals, across Scotland. The Manchester Ship Canal (opened 1894) opened Manchester Port to oceangoing vessels.

16. The Canadian canal system includes the Saint Lawrence River canals, the Ottawa River canals, the Chamblee Canal, the Rideau Canal, and the Trent Canal. Of these the St. Lawrence system has long been the most important, because it provides a waterway 4.3 m (14 ft) deep from the head of Lake Superior to the Gulf of St. Lawrence. As part of the St. Lawrence Seaway project, completed in 1959, the waterway was deepened to 8.2 m (27 ft) to permit oceangoing vessels with drafts up to 7.8 m (25.5 ft) to sail from the Atlantic Ocean to such Great Lakes ports as Chicago and Duluth. See SAINT LAWRENCE SEAWAY.

17. The first navigation canal in the U.S. was built around the rapids of the Connecticut River at South Hadley, Massachusetts, in 1793. It had two levels connected by an incline, over which boats were transported in tanks filled with water and dragged by cables operated by waterpower. The construction of the Erie Canal, started in 1817, marked the beginning of an era of canal building, which produced an aggregate or more than 7242 km (450 mi) of canals (mostly in the Middle Atlantic and Central states) and was largely responsible for opening the American Midwest to settlement. Many of the early canals are no longer in active service, having been superseded by railroads and by modern, enlarged waterways. These include the Mississippi River system, which is navigable for 2956 km (1837 mi)

and has 30 locks and dams; the Illinois Waterway, which links Lake Michigan with the Mississippi River; the 1579-km (981-mi) Ohio River Waterway system, extending from Pittsburgh, Pennsylvania, to the Mississippi River; and the New York State Barge Canal System, a principal Section of which connects Lake Erie with the Hudson River. The in tracoastal waterways along the Atlantic and Gulf coasts are an important part of the inland-waterway system of the United States, which in the late 1960s totaled 40,845 km (25,380 mi).

18. Barge Canals : On most large canals barges are pushed or pulled by tugboats and to wheats; one towboat may pull as many as 40 barges lashed together. Modern barges are designed to carry specific types of cargo. Open-hopper barges carry coal, gravel, and large equipment; covered dry-cargo barges are used for grain, dry Chemicals, and other commodities that must be kept dry; tank barges carry petroleum and liquid Chemicals. On some European canals, barges are towed in trains of two or more by gasoline or diesel-powered tractors running on a towpath beside the canal. In-certain areas men and draft animals are still used for haulage.

19. River Canalisation : Formerly, when important rivers were found to be unnavilgable at certain points, shallow side canals running parallel to the river were built with pick and shovel so that vessels could bypass that part of the river and re-enter it at a more suitable point. With the advent of power machinery, this practice has been largely discarded in favor of canalisation of the river itself; that is, a river may be dredged at unnavilgable points and provided with dams and bypass locks that control the level of the river from end to end. Construction of 40 locks and dams on the Ohio River was completed in 1929; redevelopment, begun in 1955 to replace the current system with 18 high-lift locks, was completed in 1981. Canalisation of the upper Mississippi River from Minneapolis, Minnesota, to Alton, Illinois (just above Saint Louis, Missouri), was completed in 1939-40. In May 1954 the U.S. Congress authorised the federal Government to join with Canada in the construction of the St. Lawrence Seaway; as its share of the project, the U.S. built two canals, three locks, and various other improvements along the St. Lawrence River from Montreal, Que., to Ogdensburg, New York. Canalisation of the Arkansas River which includes 13 locks and dams and a 14-km (9-mi) canal linking the Arkansas to the White and Mississippi rivers, opened the river to navigation to Catoosa,Oklahoma, in 1970. The Tennessee-Tomblike Waterway, a 407-km-long (253-mi-Iong) project that was completed in 1984, includes five dams, ten locks, and a 72-km-ling (45-mi-long) canal linking the two rivers in Alabama, Mississippi, and Tennessee.

20. Ship Canals: Ship Canals are generally of two kinds : those that connect two lakes or oceans, such as the Suez Canal and the Panama Canal and those that link an inland port to the ocean, such as the Manchester Ship Canal and the Houston Ship Channel. The accompanying table includes the major ship canals of the world.

III. River Thamas, London:

21. I have been able to get some information regarding river Thames, but no information could be obtained with respect to river Silence In view of what I have found about river Thames, it is quite apparent that what is stated in the Master Plan regarding the channelisation of river Thames is absolutely incorrect. This will be seen in item (iii) below.

(iii) Reference to the rivers like Thames in London and Seine in Paris, made in the Master Plan, appear to be misconceived if not misleading. Before us, no reference work of any kind was produced, nor any kind of literature, or brochures, or photographs have been produced before us while the case was being argued in Court, (despite asking for the schemes for river front development in Thames in London or Seine in Paris) to establish that the said assertions were correct or true. This created a doubt in our mind about the veracity and accuracy of the statements made in the Master Plan Perspective 2001.

22. Both, canals and channels, in rivers are used for navigation purposes.

23. As far as city of London is concerned, a number of canals were made connecting the trading part of the city of London and other places where water was needed, by a network of canals. The London city itself, Therefore, has "Grand Union Canal", "Regents Canal" and "Heartford Union Canal", etc. It appears that before adequate roads for transporting goods came to be made, it is these canals which were used for moving goods, not only within the city of London, but River Thames was used for the purpose of moving goods from overseas into the interior of England by use of barges.

24. History of barges and history of use of canals and waterways from the River Thames is to be found in a book titled "The Thames Record of a Working Waterway" written by David Gordon Wilson, published in 1987. In that book, the author records that for thousands of years people have hunted and farmed the banks of Thames, fished in its-waters, and ground corn with its power. People have poled, rowed, paddled and sailed along its course, not only for pleasure (that is a comparatively recent phenomenon) but as traders, bringing vital supplies into the English countryside and taking heavy cargoes back with the stream to London River. According to David Wilson, the trading craft of the fresh water Thames were known as Western or West Country barges. In that book, the author David Wilson has given the history of trading by River Thames by barges and its bargemen.

25. Wilson records that since the early Saxon of Thames, river Thames was used for purpose of trading and its flow was harnessed for the purpose of milling. It records that the traffic on the river continued to increase throughout centuries that followed. Existence of traffic on the Thames in the year 1305 is supported by existence of a winch and a flash lock at Marlow. Apparently, there was an act of Edward in 1474 which mentions ships and great barges between London and

Oxford. One of the methods of moving laden river barges was to tow them from the river bank by gangs of men. This was known as hailing (page 49) and was one of the" most widely used method for moving cargoes along rivers and canals. Other beasts of burden replaced the men (page 81). Goods were hailed by use of horses along the river and the canals. Wilson records that in the year 1729, the first Thames Commission Act was enacted which was meant to obtain some control over the operation of flash locks and tolls charged for the use of towing powered either by men or horses and they are now used. Another Act enacted in the year 1951.

26. The Regents Canal mentioned above opened later. "In 1820 came the opening of Regents Canal, a wide waterway connected to the Grand Junction near Paddington and looping around the northern outskirts of the city to join the Pool of London at Lime house Basin. Here, small ships could unload cargoes such as timber and coal direct into canal barges, for distribution around London and further afield via the Grand Junction" (page 83).

27. The Grand Canal exists even today as it is clear from currently published Bartholomew''s Visitors London Map. The said canal is clearly indicated in the Bartholomew''s Map of London.

28. Reference to David Gordon Wilson book makes it clear that what is stated in the Master Plan about River Thames is factually incorrect whereas River Thames was used for commerce and trade and was navigable by a suitable type of crafts called Barges. It is common knowledge that there has been no river traffic worth the name in the river Yamuna as it passes through the territory of Delhi. The fact that canals have been in existence in the city of London does not establish that the River Thames is channelised. As noted by D.G. Wilson, River Thames was used for navigation since Saxon times. It continues to be so used even today,

29. The Master Plan for Delhi has been made under the statutory provisions of the Delhi Development Act, 1957, it is enforceable by virtue of the provisions of that statute, but its contents cannot be treated as a statute of Parliament. Nor can the text of the Master Plan violate an Act of Parliament.

30. Therefore, it is not possible to accept, without anything more, that channelisation will result in "unlimited opportunities to develop the river fronts like Thames in London, or Seine in Paris".

31. As the plan monitoring and review part of the Master Plan Perspective 2001, also mentions under the head "Public Utilities" channelisation of River Yamuna Development of Area thereof, Re-modelling of existing drains for flood protection measures to be completed within a period of five years, it can only be noted that the Master Plan proposed to complete the development in five years--which in fact it did not.

32. Five Years have elapsed since the Master Plan Perspective 2001 came into force, but nothing seems to have been done on either channelisation of river Yamuna or re-modelling of drains.

33. Under the head "Recreation" are mentioned development of lakes and river front developments, which is also supposed to have been achieved in five years from coming into force of the Plan. Neither of these things have happened in five years period, postulated by the Master Plan Perspective 2001.

34. None of the above said information which is extracted from Encyclopedia Britannica, or Microsoft Encarta, has been given to us by any of the parties before us. It has been collected it from the said reference works. The matters being in the domain of public knowledge, one can take cognizance of the same.

35. Before one refers to what is stated in the Master Plan Perspective 2001 about channelisation of river Yamuna, one has to keep in mind the nature and extent of river Yamuna.

36. A look at the pre-partition map of India would show that in the northern parts of India, there were some major perennial rivers. They were five rivers, viz. Indus, Ravi, Beas, Chenab and Jhelum in the western part of northern India. There was a great genatic plain which was fed by two perennial rivers, the Ganga and the Yamuna.

37. In this petition we are concerned with river Yamuna and its banks and its flood plains, i.e. lands contiguous to its banks, as it passes through the Union Territory of Delhi.

38. Every one knows a river when one comes across it However, as to what rivers are, has been subject-matter of judicial pronouncement. In Albania v. Georgia: 16 Law Ed 556, river is stated to be "a natural stream of water, of greater volume than a creek or rivulet, flowing in a more or less permanent bed or channel, between defined banks or walls, with a current which may either be continuous in one direction or affected by the ebb and flow of the tide.

39. According to the aforesaid view, the bed of the river is the channel of the river.

40. According to the definition given in the Northern India Canal and Drainage Act, 1873, which applies to Uttar Pradesh and State of Punjab and Delhi, (Punjab referred to wherein was obviously before Punjab was divided into Haryana and Punjab), "a canal includes--all canals, channels and reservoirs constructed, maintained or controlled by the State Government for the supply or storage of water.

Although a "canal" is different from a "channel", this statutory definition equates channel to a canal, and for over a hundred years "channel" is included in a "canal", in the territory of Delhi.

41. According to a report "Planning for River Yamuna" prepared by the Planning Division of the Delhi Development Authority, which had been asked for, and given to

us, it is clear that the river Yamuna has its beginnings at Yamuna located at a a height of 3320 meters in Himalayas in Uttar Pradesh, and traverses a distance of 1400 km. before merging with river Ganga at Allahabad in Uttar Pradesh.

River Yamuna enters the plains in north India at Tajewala where water-works exist, which were constructed in the later part of the last century, where the river is fed into two canals, namely, the Eastern and the Western Yamuna canals.

42. Apparently these two canals were constructed by virtue of the provisions of the Northern India Canal and Drainage Act, 1873, and the schemes were prepared, and effect given thereto, which resulted in these two canals.

43. It appears that presently these two canals take up almost the entire water resources of the river Yamuna; and the "river" flow near Karnal, Panipat, and Delhi is as a result of discharge of certain drains and two "escapes", namely, Munak escape and Indri escape. Some water is alleged to be "regenerated" owing to geographical, topographical situation along the River Yamuna and is drawn for supplying water to the city of Delhi/New Delhi.

44. The water which now comprises of river Yamuna, as it passes through Haryana towns of Karnal, and Panipat, and the Union Territory of Delhi, is only that which is left over, or not taken up by the States of Haryana and Uttar Pradesh in the aforesaid two canals, and what comes into it as a result of flow of various drains into its bed or channel.

45. The report goes on to state that "the river virtually becomes dry after Delhi (why has a perennial river dried up?) till it is fed by the water from Ganga through upper Ganga canal and through the river Hindon by the "Hindon Cut", which waters along with the waste waters from cities such as Saharanpur, Muzaffarnagar and Ghaziabad becomes the river Yamuna. The discharge so available is again picked up beyond Okhla barrage and fed into the Agra Canal and the Gurgaon canal. The "regenerated" and discharge waters of the river, along with industrial and domestic discharge of the towns like Noida, Faridabad, Palwal, Kosi, Vrinda van and Mathura, reaches Agra. At Agra the river again receives the water discharge from Agra city. The quality of the water improves when it reaches the town of Etawah due to long travel and natural recharge water. The river Chambal meets the river Yamuna downstream of Etawah and the river water condition improves considerably, which condition prevails till it merges with the river Ganga". The questions within brackets needed to be answered by the respondent authorities. They have not done so. Perhaps river is dried up because of its waters are taken away by western and eastern Yamuna Canals; and from Agra no water comes into river Yamuna, only polluted effluents do.

46. From what is stated above, it is quite clear that the river Yamuna passes through the States of Uttar Pradesh, Haryana, Union Territory of Delhi, Haryana again, Uttar Pradesh again, and then finally merges with Ganga at Allahabad in Uttar Pradesh. It

clearly is an interstate river.

47. The report also indicates that the western Yamuna canal and the eastern Yamuna canal schemes were completed in 1892. (Whereas the western Yamuna canal irrigates 486,000 hectares annually in Haryana, the eastern Yamuna canal irrigates 191,000 hectares annually in Uttar Pradesh). Both of these canals having been created under the schemes prepared under the Northern India Canal & Drainage Act, 1873.

48. A reference to the World Aeronautical Chart (2440) Delhi, which shows parts of Pakistan, Punjab, Haryana, Uttar Pradesh and Delhi--New Delhi, would reveal the canals in North India. This chart shows parts of river Jhelum, Chenab, ravi in Pakistan; river Satluj and Beas in India and Pakistan, river Yamuna and River Ganga (in part). This chart also shows the eastern and the western Yamuna canals in their entirety. Whereas the eastern Yamuna canal, after Tajewala, is made to flow into river Yamuna at Delhi near Okhla near the Delhi--U.P. boundary, the western Yamuna canal takes away the waters of river Yamuna into Haryana via Jagadhri, Karnal, to places like Narwana, Sirsa, Noha, and even Hanumangarh, through one of its branches, while another branch of it takes waters to Safidon, Jind, Hansi and Hissar. Another branch takes waters to Shadipur Julana and beyond. Another branch takes the waters of Yamuna to Bhiwani. Another branch takes the waters through Panipat to Gohana and Rohtak. Most of the waters of river Yamuna is thus taken up by me extensive canal Network of the State of Haryana.

49. A branch of western Yamuna canal, the Delhi Branch, brings back a little water into Delhi. At present the city of Delhi is starved of its prehistoric and historical natural water resource of river Yamuna.

50. The reason for setting out matters above is to indicate the reason why the river Yamuna as it flows through Delhi, and places in Vrindavan and Mathura has now been converted into a large drain. The pure mountain waters are excluded from it by the aforesaid two canals, and impure and polluted waters of drains of various cities are poured into the natural channel of river Yamuna. If Yamuna river had been has polluted as it is now in Delhi--Vrindavan--Mathura--Agra Section, in the times when legends of Lord Krishna had been created, there would have been no Raas-Leela of Krishna and his gopis frolicking in the Yamuna waters!! Surely, Krishna would not have cavorted with his companions in a dirty drain!!

51. It appears that it is only during the rainy season, when the canals of Haryana cannot carry the larger quantity of waters from the catchment areas that the river Yamuna is permitted to become a River. It is surprising that the waters of river Yamuna are almost entirely appropriated by the State of Haryana; and the State of Uttar Pradesh. Surely it was not the intent in 1892 to starve Delhi of Yamuna waters, surely the Constitution of India and the laws enacted thereafter, did not so intend. Why has this sorry state been permitted to become so nightmarish for Delhi? Would

it not be far simpler to feed the canals of Haryana with waters from two rivers Satluj and Beas through the Govindsagar by constructing suitable linking canals?

52. It appears to me that one way of improving the quality of water for Delhi would be to increase the supply of pure water in river Yamuna. Increased supply of water would automatically bring down the percentage of pollutants in the Yamuna waters. Primarily, the drains that discharge waters in Yamuna must have water treatment plants to eliminate the polluting matter.

53. The existing river water schemes on the river Yamuna are mentioned as "Wazirabad Barrage" upstream of Delhi for providing drinking water to Delhi, the Agra canal beyond the Okhla Barrage and the Gurgaon canal an interstate canal between Haryana and Rajasthan. It takes off from the Agra canal at a distance of 8 km. from Okhla.

54. The sorry state to which river Yamuna has been brought by actions or inactions of the authorities concerned, as stated above, resulting in the destruction of the bio-ecological system of river Yamuna, as it flows through the National Capital Territory of Delhi, is stated as follows in "Planning for River Yamuna" prepared by the Planning Division of the Delhi Development Authority, thus :

The length of river Yamuna in National Capital Territory of Delhi is about 50 kms. with 50% of the length in present urban limits and the balance in rural areas of Delhi with a width varying from 1.5 kms. to 3 kms. River Yamuna has become an intolerable centre of pollutants to such an extent that in half of its length the quality of water is E (not fit even for animal consumption) due to fall of 17 large storm water drains. Quality of water in terms of A, B, C, D & E has been defined in Appendix No. l. A lot of unauthorised construction has come up near the old Yamuna bridge, near the NH-24 bridge, and near the Jamia Millia University. Already there are 7 bridges, two pantoon bridges and four are under contemplation. The area of river bed is 9700 hects. with a break-up of 1645 hects. under water and the balance 8055 hects. under dry land which can be reclaimed for any purpose like recreational and other uses. Major drains of Delhi have been shown in map No. l.2. (Map of Delhi showing major drains).

55. From what is stated above, it is clear that unless the quality of water of Yamuna river, as it flows through the city of Delhi, is improved by increasing the water supply and providing adequate number of water treatment plants, river Yamuna, as it flows through the city of Delhi, would be nothing but a big sewage drain, bigger than any of the 17 drains that discharge unhealthy polluted water into the river.

56. It is a matter of public knowledge that the work of improving the quality of water being discharged by the 17 drains into the river Yamuna has been taken up seriously only after the Supreme Court of India has intervened in the matter on a public interest litigation, and is taking active interest in ensuring that Yamuna waters are cleaned up.

57. In view of the quantity and quality of water which is now flowing through the river Yamuna, it is necessary at least, to supplement the quantity of water coming into the river Yamuna, by increasing the discharge of pure water into the natural bed of river Yamuna at Tajewala. If necessary, this be done by reducing the flow of water into the eastern and the western Yamuna canals. Increasing the quantity of pure water would itself have the consequence of reducing the percentage of impurities in the River Yamuna in Delhi.

58. I apprehend that until and unless the quality of the water in the river Yamuna is improved either by increasing the supply of unpolluted water into the river, or by having adequate water treatment plants at the end of each of the 17 drains, before they discharge water into river Yamuna, to make it fit for human consumption, the water of river can only ensure spread of disease and death through out the length and breadth of the city, on such waters being used by the citizens of Delhi for any purpose, whatsoever, be that for the purposes of bathing, offering religious oblations, or any water sport and recreation. (Refer back to what is stated in Encyclopedia Britannica about the HepatIT is epidemic being caused in Delhi because of water pollution - hereabove). These observations are made because of the contents of the Master Plan for Delhi, which have been pointed out to us by Ms. Geeta Luthra, learned Counsel for the respondent and re-emphasised by Mr. Sahai, Senior Advocate on behalf of the Delhi Development Authority.

59. The Master Plan Perspective 2001 contains the following textual matter, insofar as it is applicable to river Yamuna :

Ecological balance to be maintained. Delhi has two distinct natural features - the ridge which is the rocky outcrop of Aravalli hills and the river Yamuna. Some parts of the ridge have been CC erased in the Central City Area. No further infringements of the ridge is to be permitted; it should be maintained in its pristine glory.

60. (It is to be noted that the Supreme Court of India has taken up the matter of damage to the ridge in a public interest litigation, and it is because of the orders passed by the Supreme Court from time to time that portions of the Aravalli hills which were unlawfully encroached in the southern parts by some marble dealers and other activities, has been attempted to be stopped. As far as the other misuse of the ridge by other authorities and religious organisations is concerned, some orders have been passed to eliminate the misuse of the ridge).

The Master Plan again states that: "River Yamuna is to be madepollution free through various measures. On the bigexpanse of its banks, large recreational areas to be developed and to be integrated with other urban developments so that the river is an integral part of the city-physically and visually

61. The above said part of the Master Plan Perspective 2001 itself makes it clear that the first step to be taken with regard to the river Yamuna is to make it pollution free.

62. Till Yamuna is made pollution free, it will be a folly to carry on any scheme of making "recreational areas", and urban development on the course of the River. Unless the river is made pollution free, instead of providing healthy environment, any development proposal will ensure disease, if not epidemic. Instead of providing "recreation" the polluted river will spread sickness, and death. Yamuna which is not pollution free, is only likely to be a source of misery rather than "recreation" for the citizens of Delhi.

63. The Master Plan 2001 refers to "channelisation" of river Yamuna in following terms:

Rivers in the major metropolitan cities of the world like Thames in London and Seine in Paris have been channelised providing unlimited opportunities to develop the river fronts. After the results of the C model studies for the channelisation the river Yamuna become available, development of river frontshould be taken up. Consideringall the ecological and scientific aspects, as a project of special significance for the city.

64. The above said observations make it clear that till the time of writing of the Master Plan Perspective 2001, the results of model studies on channelisation for river Yamuna had not become available. The Master Plan itself postulates that till such studies are made available, river front development should not be taken up.

65. There is no record of River Yamuna being used for the purpose of transport of goods by traders in the territory of Delhi.

66. Yamuna, as a perennial river, has already lasted forever. There isno reason why it should not last forever more. It is part of History of Delhi that River Yamuna used to flow by the Walls of the Red Fort during the Mughal times, and that Chandni Chowk had a canal (but no evidence of Chandni Chowk having a canal exists since A very long time) whereas existence of canals within the city of London is recorded, the Regent''s Canal, a wide waterway was opened as late as in 1820. This canal passes through large parts of the city of London. This Canal exists today.

67. There is no similarity between river Thames and river Yamuna as far as navigation and use of river transport is concerned. In any case, the Tajewala water works were constructed for feeding the western and the eastern Yamuna canal. At that time Punjab, Delhi and Uttar Pradesh were treated alike by the then British rulers (See preamble to the Northern India Canal and Drainage Act, 1873). Despite these two canals taking waters from the river Yamuna, it still had sufficient water for Delhi. Perhaps with the creation of Haryaha, the western Yamuna canal network was extended beyond the capacity of Yamuna to provide waters. The waters are not put back into Yamuna to maintain the waters of Yamuna during its passage through the Union Territory of Delhi despite the facts that according to law relating to river waters, (cf. American Jurisprudence 2nd Vol. 78, p. 429 - 885), it is clear that Riparian owners of land i.e. those whose lands are adjacent to the river banks are permitted

to take waters for their use, and have an obligation to put the waters back into the river. It seems to me that it would not be permissible for any person or body, or even a federating State to take away the waters, by diverting the course of the rivers, through canals or otherwise, and not put the same back after reasonable use thereof. It would not be permissible for one riparian owner to so appropriate the waters of a perennial river, that the river is rendered virtually completely devoid of waters down stream, virtually extinguishing the rights of lower riparian owners or lower riparian States. The resultant inadequate water supply in river Yamuna has ensured that river Yamuna cannot be used for any navigation purposes and, Therefore, to say in the Master Plan that river Yamuna should be channelised is an attempt to mislead, if notan attempt to defraud the public at large.

68. It is further stated in the Master Plan about environment as follows :

10.A. Natural Features: Two major natural features in Delhi area the Ridge and River Yamuna. Though part of the Ridge in Delhi has been erased the total Ridge area since available is about 7777 hac. This should be conserved with utmost care and should be afforested with indigenous species with minimum of artificial landscape.

River Yamuna now has a high level of pollution, which is mainly from the untreated sewerage and waste from industrial areas. Strict enforcement of Water Pollution Act is needed to keep the river clean. Channelisation of the river as proposed shall provide scope for a major river front development scheme.

69. Do the above said statements advocating maintenance of two essential features of Delhi harmonise with proposal of channelisation of river Yamuna, or will the channelisation not destroy one of the "two major natural features of Delhi, namely, river Yamuna"?

70. As stated hereinabove, the quality of water in the river Yamuna is categorised as ''E''. This makes the water of river Yamuna unfit for even animal consumption. It appears to me that unless quality of water is improved to make it fit for human consumption, it is pointless to talk in terms of channelising. I see no useful purpose in channelising something which is a mere drain without first ensuring that waters discharged by the drains are so effectively treated that the river waters become fit for human consumption. Till the waters of the drains which are discharging sewage waters into the river Yamuna, which come from various parts of city of Delhi, are properly treated there is no likelihood of water of river Yamuna being rendered free from dangers to the health of the citizens and visitors of Delhi.

71. I have earlier reproduced the words contained in the Encyclopedia Britannica regarding water treatment from public health point of view for the reason that I am of the view that it is essential that the river Yamuna be restored its pristine glory being one of the two great rivers which traverse the width of the subcontinent of India (from west to east) along with the river Ganga, so that the benefits of clean water is made available to each and every city, town or village, located close to the

river Yamuna, instead of Yamuna, from Tajewala Water Works uptil the time it meets with the river Ganga at Allahabad, being reduced to the status of a sewage drain. A good deal of callous neglect on the part of the authorities concerned appears to be the reason for the river Yamuna having water which is unfit for human consumption, as untreated sewage waters and sewage drains waters have been made to enter the river Yamuna.

72. In a public interest writ petition, the Supreme Court is already seized of the mattere of treating the sewage waters of the drains which discharge effluents into the river Yamuna. It is hoped that the efforts which are currently being made by the Supreme Court will bear fruit, and the waters of the river Yamuna as it flows through the Union Territory of Delhi, will once again become fit for human consumption.

73. As stated above, presently the waters in the river Yamuna are not even fit for animal consumption.

74. A reference to the notification u/s 4 of the Act, reproduced hereabove, indicates that the plans for channelisation of the river Yamuna, have not been publicly disclosed in the notification dated 23.6.1989. The said notification stated that the land which is the subject-matter of the acquisition, is needed for public purpose, namely, the ''Planned Development of Delhi''. This notification as one reads along, appears to say that what was to be acquired, was the land on which the river Yamuna flows throughout its length in the Union Territory of Delhi, as also lands which are its flood plains. This notification, inasmuch as it does not even mention channelisation, in our opinion, makes very strange reading, as the land under the river is expected to be under water, and it appears to be very strange "Planned Development of Delhi" which planned development of River Yamuna is to be done by "carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes re-development" on the water bed of river Yamuna, and beyond its normal water channel, on sand.

75. It also makes strange reading, because the rivers of India are natural resources of this country. All the natural resources of the country must exist, and continue to exist and must be preserved for the benefit of the citizens of India. It is not possible without valid legislation for that purpose, for the natural resource like river Yamuna, a perennial river to be exclusively appropriated to any authority, whether local body like the D.D.A., or the Delhi Administration.

76. The relevant provisions which will require consideration with reference to rivers in India are the provisions of certain items in the Lists set out in the Seventh Schedule to the Constitution of India. As far as List I is concerned, the items which need to be kept in view are items 24,30 and 56. As far as List II is concerned, the items which need to be kept in-view are items 13 and 17, and as far as List III is

concerned, item 32 has to be kept in view. The aforesaid items in the aforesaid Lists read as under :

List - I

24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.

30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.

56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

List - II

13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I.

List - III

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.

77. Also has to be kept in view, is the provisions of Article 162 of the Constitution of India, which are brought in aid by the Counsel for respondent No. 1, to say that the executive power of the Union extends to all matters which are covered by List I, II and III.

78. One has to bear in mind that the items in the Lists in the Seventh Schedule are intended to indicate which Legislature has the power to legislate with regard to a particular subject mentioned as one of the items of the List. List I relates to the power of the Union Legislature to legislate. List II relates to the power of the Legislature of the States to legislate on the subject, and List III is the concurrent List from which both the Union Legislature and the State Legislature can legislate.

79. What is significant in the aforesaid items in the Lists is the mention of "inland waterways".

Inland Waterways" are essentially located on the land mass as distinct from the seas. On the land mass the waterway can be either very on large lakes, on which transportation from one corner of the lake to the other can take place by means of mechanically propelled vessels, or they can be on the lengths and the breadths of the perpetual rivers, flowing on the land mass.

80. As is clear from the items in the aforesaid Lists, what necessary is that there be a legislation regarding the waterways. The legislation can be by the Union Parliament (item 24 in List I), or it can be by State Legislature (item 13 in List II), or both (item 32 in List III). The reason for distinct items on these lists appears to be that where it was the intention that certain waterways declared to be a national waterway, there has to be a legislation by the Union Parliament, whereas if certain waterway is not a national waterway, but a State inland waterway, then the State concerned can legislate with regard to inland waterways. It is also permissible by item 32 of the concurrent List for both the Union Legislature and the State Legislature to enact legislation, but such legislations shall be subject to the legislation enacted under item 24 and 56 of List I.

81. River waters vary in depth because of the deposit of river sand in the river bed or creation of sand bars in the water course of the river. In order to enable mechanically propelled vessels to negotiate rivers as an inland waterway, it is essential that the depth of river channel be adequate to ensure that the mechanically propelled vessels, boats, tug boats, paddle wheelers etc. can safely traverse the inland waterway. It is maintenance of a naturally deep river channel which will ensure that mechanically propelled vessels are able to traverse its length. Its constant dredging will ensure that the width of the channel of the river is safe for river transport, and it is wide enough to permit overtaking of the vessels moving in the same direction, and crossing over of the vessels moving in opposite direction.

82. The provisions of item 56 of List I in the Seventh Schedule to the Constitution, make it clear that the regulation and development of Inter-State rivers'' and river valleys have to be under control of the Union of India and the law declared by the Parliament, which law has been enacted in public interest. The river Yamuna being an Inter-State river, having its origin in the State of Uttar Pradesh, flowing through the State of Haryana, Union Territory of Delhi, Hary ana and Uttar Pradesh again, until it merges with the river Ganga, being a river flowing through two States, and the Union Territory of Delhi, has to be termed as an Inter-State river. Development of the river or the development of the river valleys--which terms must include the development of the river bed and the areas subject to inundation by floods in river Yamuna, is a subject which can be legislated upon by the Union of India. Even Entry 17 relating to water, about which the State Legislature can legislate, is made subject to the provisions of Entry 56 of the List I by the Constitution. In these circumstances, it appears to me that unless the Government of India itself approves of any plan regarding the development of the land adjacent to the river banks of the river

Yamuna which are liable to be inundation by floods, that is to say the alluvial lands and the river bed itself over which the water flows have to be planned for by the Union of India, and not by the Delhi Administration, or the Delhi Development Authority.

83. Waterways can be inland waterways as postulated by the Constitution of India, but they can also be in tracoastal waterways, as also water channels along with coast. Whereas in certain places making of waterway is called channelisation, in America the word used for the same is canalisation.

84. Mr. P.N. Lekhi, Senior Advocate, appearing in C.W.2556 of 1990, contends that the notification u/s 4 of the Act mentioned hereinabove, does not mention that the planned development of Delhi is concerning the "channelisation" of river Yamuna, as it only states that the land is likely to be required for the planned development of Delhi. He also asserts that the notification u/s 4 of the Act is bad on account of vagueness as the notification does not have the map of the area likely to be required. Map is said to be with the Collector, and even the map produced in Court by the respondent does not identify the land.

85. The land identifying Khasra number needed for "channelisation" of river Yamuna, were stated in the notification dated 22.6.1990, containing the declaration u/s 6 of the Act. Words"channelisation of Yamuna River" were added to the words "Planned Development of Delhi" in the Section 6 notification.

86. The notification u/s 4 of the Act, recites that, "map showing the boundaries of the land covered by this notification, is available for inspection in the office of the Collector of Delhi". This map which was stated to be available in the Collector''s office, was not attached to the writ petition, nor was it filed along with the reply of the respondents, despite the averments that the notification u/s 4 of the Act was vague in material particulars. It is only when we wanted to see the map, mentioned in the notification, copy of the map was produced before us. Wehaveseen copy of the map. That map appears to beacopy of some map which pre-existed. It bears no indication as to where what area is located- For example, it does not have written upon it the words Wazirabad barrage, Yamuna marginal bund, NOIDA bridge, Batla House, Women Polytechnics, Zakir Nagar, Kalindi Colony Road, Monkey Bridge. As it was not possible to identify the various points on the map itself, when we made it known to the respondents, the respondents produced another map, bearing the said "legends". Thus it is only the map produced in the Court for the first time, which enables the boundaries of the land likely to be acquired u/s 4 of the Act to be identified. Otherwise, only those persons who are well conversant with the lands in Delhi, and also well conversant with the map drawing techniques, and can read maps, would be able to identify the land which was likely to be acquired. It would not be fair to expect that lay persons, especially those who are carrying on agricultural activities in the flood plains of river Yamuna, would be able to locate, with any accuracy whether their own bit of land is covered by the notification u/s 4

of the Act or not. To that extent the notification u/s 4 of the Act lacks in material particulars.

87. Notification u/s 4 of the Act is also challenged by Mr. Lekhi on the ground that at the time of issuance of the notification there was no Master Plan inexistence, the first Master Plan having come to an end by afflux of time, and the second Master Plan had not come into operation.

88. Mr. Lekhi contends that as far as channelisation of river Yamuna is concerned, same finds mention in Perspective Plan 2001, but that itself is not a plan in presentii inasmuch as the averments in the Master Plan regarding channelisation of river Yamuna are contingent plans, which plans are to come into operation only after the Model Studies for channelisation for the river become available. He contends that the model studies of channelisation of river Yamuna had not become available at the time of issuance of this notification, and, Therefore, the condition precedent to the plan for channelisa corporation not having been fulfillled, notification u/s 4 of the Act could not have been issued by the Government. In any case, even after the model studies having become available, the Master Plan postulates that the plans for channelisation of the river Yamuna shall be taken up after Yamuna has been made pollution free, as also all the ecological and scientific aspects have been considered. It is contended that no ecological studies of the area near river Yamuna or consequential effect of channelisation on ecology have been done to date, and, Therefore, even that condition has not been fulfillled at the time of issuance of the notification and even till date.

89. It is important to note that the notification u/s 4 of the Act mentions the purpose of acquisition of Planned Development of Delhi, and the declaratory notification u/s 6 of the Act mentions that the public purpose is Planned Development of Delhi, viz. channelisation of river Yamuna.

90. On being repeatedly queried about the meaning of the word "channelisation" in the context of river Yamuna, the Counsel for the Delhi Development Authority has only referred to the dictionary meaning of the word "channel" and "channelise" which is found in English language dictionaries. It is also interesting to note that whereas the words "channel" and "channelise" exist in the dictionary, the word "channelisation" does not occur in the very dictionaries relied upon by the Counsel for the Delhi Development Authority. Even our own research has not revealed the English meaning, if any, of the word "channelisation", as the word "channelisation" is not found in the dictionaries, like the Collins English Dictionary. The Oxford English Dictionary says "channel" means to form channels in; to wear or cut into channels; to furrow, groove, flute; to provide (a street) with a channel or gutter for the conveyance of surface-water; to excavate or cut out as a channel; to convey through (or as through) a channel; to pass by (or as by) a channel. The word "channelisation" is found in this dictionary to mean "so channelisation the action of channelising; spec. in Neurology, the formation of a channel of nervous conduction

or discharge (cf. Canalisation)." This leads to a strong surmise that the word has no usage in the English language except in Neurology. The word "channel" has its verb in the form of "channelise" which means the act of making a channel, but channelisation appears to be a word without an ordinary- meaning in English language. However, it is that word which is used in the notification u/s 6 of the Act.

91. The use of the word "channelisation" in the context of the Master Plan for Delhi itself suggests that channelisation is to be undertaken after the river Yamuna is made pollution free. As stated hereinabove, at present 18 drains are flowing into the river Yamuna, which drain waters are not treated before they enter into the river Yamuna. Today the quality of water is such which is not even fit for animalconsumption. The river is not even today pollution free, it was not pollution free at the time of Section 4 and Section 6 notifications.

92. In these circumstances, it appears that the makers of the Master Plan for Delhi themselves postulated that before channelisation is undertaken in the river Yamuna, whatever that expression means, the waters of the river Yamuna in the Union Territory of Delhi have to be made pollution free. This pollution free Yamuna had not been achieved at the time of issuance of the notification u/s 4 of the Act in 1989. No plan for "channelisation of river Yamuna" dated 1989, or thereafter has been produced before us. We are not surprised that such a plan does notexist, because Master Plan Perspective 2001, itself makes channelisation of River Yamuna contingent upon the river Yamuna being made pollution free. The above reproduced texts of the Perspective Plan 2001, make it quite clear that the first priority according to the makers of the Perspective Plan 2001, was that waters of the river Yamuna in the Union Territory of Delhi be made pollution free. Only then planning concerning the flow of the river Yamuna, (if that is what "channelisation" means) is to be planned for and given effect to. In other words, till the river Yamuna is made pollution free, there can be no plan for development of zone "O" of the Master Plan Perspective 2001, the public purpose stated in the notification u/s 4 of the Act is presently non-existent. The acquisition proceedings must fail.

93. There is force in the contentions of Mr. Lekhi that procedures laid down by law have not been followed. As there is no plan indicating the line of flow of river Yamuna after "channelisation", or re-routing of river Yamuna, the declaratory notification u/s 6 of the Act is a fraud on powers. Especially as the notifications which has to be tested by Article 300A of the Constitution, which limits the power to acquire land, to the authority of Land Acquisition Act and its procedures. The procedure of the Land Acquisition Act have not been complied with, the notices of acquisition are bad in law.

94. Mr. Lekhi attacks the declaration u/s 6 of the Act on various grounds. He says that the statutory requirements of notification u/s 6 of the Act have not been complied with, and, Therefore, the declaration u/s 6 of the Act is also ultra vires.

95. One of the attacks of Mr. Lekhi on the notification u/s 6 of the Act is that the same is not valid in law, and is fraud on the powers conferred by the Act, inasmuch as the said notifications u/s 6 of the Act have been actually ante dated, or forged, and, Therefore, of no effect, and, since they are forged, same are vitiated. He refers to page 111 of the record, and says that the notification u/s 6 of the Act, which is stated to be signed by Ms. Geeta Sagar, I.A.S., was actually sent for publication on 26.6.1990, and not on 22.6.1990, and, Therefore, the same could not have been gazetted on 22.6.1990, the date borne on the gazette. He has brought to our attention to the fact that the proposed gazette notification was sent to the Publication Department of Delhi Administration for onward transmission to the printers who were to print the Official Gazette. He has also shown a communication addressed on behalf of the petitioners dated 1.8.1990 which has been addressed to (i) Controller, Department of Publication, Old Secretariat; (ii) Mr. N.G. Royers, Assistant Controller (Personnel), Department of Publication, Old Secretariat; (iii) Mr. Karam Chand, in charge Gazette Section, Department of Publication, Old Secretariat; fiv) Secretary, Land & Building Department, Delhi Administration, Vikas Bhawan; ind (v) The Manager, Government of India Press, Mayapuri, Ring Road. The said letter is at page 68 of the record. It states that the petitioners had visited Kitab Mahal, Baba Khnrak Singh Marg, New Delhi and Sales Counter, Government of India Publication, Old Secretariat, to obtain a copy of the gazette dated 22.6.1990 which contained the declaration of intent to acquire the lands u/s 6 of the Act the KitabMaha the shop from which Government publications are made available to the public) told that no such notifications have been published so far, and they have not received any such gazette. According to Mr. Lekhi, this establishes that the said gazette has not been "published", as is required by the Act. on the date on which it is stated to have been published.
To my mind publication must include within it, performance of prior acts of printing and distribution, and then exposure for the purposes of distribution or sale.

96. According to Mr. Lekhi, publication of any document, rule or order, which is likely to affect the rights of the citizens, is necessary to ensure the existence of rule of aw, and in support he refers to the judgment of the Supreme Court (L.M. Sharma and N.M. Kasliwal,]J) in D.B. Raju Vs. H.J. Kantharaj and Others, , wherein the Supreme Court has observed as follows :

"It was further observed that unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary and it was, Therefore, necessary that subordinate legislation in order to take effect must be published or promulgated in some suitable manner whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. The decision instead of helping the appellant is clearly against him. The vital difference between an Act of

a Legislature and a subordinate legislation was earlier noted in Hiirla v. State of Rajasthan. The Acts of the legislature are passed by the accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done, and this is done only after debates take place which are open to the public.

97. The above said observations clearly show that there must be some manner of publication. In the instant case, there can be no doubt that Section 6 of the Act itself postulates publication in the Gazette. The question is whether on issue of the gazette beyond the confines of the Government Printing Press for distribution, can be said to be "publication". It is in this context that the petitioners had written to the authorised dealers/distributors of the Gazette published by the Delhi Administration, to let them have a copy of the Gazette. The communication received from the authorised distributors of the Delhi Administration, accordingly to Mr, Lekhi, establishes that there has ''been no distribution or exposure of the Gazette to the members of the public till the date of the reply letter of the distributors of the Gazette.

98. Inasmuch as notification u/s 6 of the Act was not available with the distributors of the Gazette--Kitab Mahal, as is established from their communication to the Counsel for the petitioner, it cannot be said that the notification u/s 6 of the Act has been published till the date of that letter, that is to say 1,8.1990.

99. The non-publication of Section 6 notification within two years of the Section 4 notification, is fatal to the acquisition proceedings, and on that account the acquisition notifications in the instant case have to be struck down. In other words, the requirements of Section 6 of the Act "by publication in the Official Gazette" were not satisfied, inasmuch as even the distributors of the printed gazette had not received their supplies from the Government Printing Press and there was no exposure or sale to the public. So, they were incapable of distributing it to those who were interested in having it, whether they are libraries or members of public. There being no "publication" in law, the statutory requirements not having been satisfied within the time stipulated by Section 4 read with Section 6 of the Act, the "ante-dated" Gazette notifications, which were later made available, are of no effect, as the procedural safeguards postulated by the Act had not been fulfillled. The notifications for acquisition of land cannot be said to be valid in law, and they stand vitiated on this account.

100. In reply to these averments of Mr. Lekhi, Ms. Geeta Luthra for the Delhi Administration and Mr. Ishwar Sahai for the Delhi Development Authority, have asserted that it is quite sufficient that the Gazette is dated 22.6.1990, and it is available, and they relied upon the judgment of the Supreme Court (M.N. Venkatachaliah, C.J. and Dr. A.S. Anand, J.) in M/s. Pankaj Jain Agencies Vs. Union of India and others, . What A was decided by the Supreme Court, was somewhat different. The Supreme Court was ruling upon the meaning of "publication", vis-a-vis

a taxing Statute and, Therefore, said that availability for purchase cannot be the criteria whether a matter has been "published" or not. This is so as the taxing statute in order to be effective has to come into operation forthwith as tax has to be levied and collected according to law (Article 265 of the Constitution of India).

The instant case is somewhat different. This case is for acquisition of immovable property. Power of eminent domain is not absolute, it is controlled by Article 300A. If it is made out, as has been done here, that the printed Gazette had not even reached those persons who were responsible for its distribution, there is a strong suspicion that it has not been printed, and, Therefore, the question of "publication", whatever the word means, does not even arise.

101. I am of the view that mere fact that something has been printed in a printing press, and stays there, does not get to be distributed within the time limited by the Statute, it cannot be said to be "published" in the manner postulated by the Statute. If we are to hold otherwise, it would put an end to the rule of law. Public awareness of orders affecting the rights of the citizens is a sine qua non for the continuance of the rule of law. We are also of the view that the observations of the Supreme Court in D.B. Raju Vs. H.J. Kantharaj and Others, reproduced above, are applicable to this case, and Panjak Jain Agency case, being Taxing statute case, was a different type of case, and observations made therein, are not applicable to the instant case.

102. No attempt has been made on the part of the respondents to indicate whether the notification u/s 6 of the Act, which on its face is dated 22,6.1990, was available with the distributors either on that date, or on any subsequent date. In other words, we have no option, but to accept what is stated in this regard by the petitioners, and hold that the declaration u/s 6 of the Act was not published in the Gazette on 22.6.1990.

103. Under the Land Acquisition Act, the notification u/s 6 is not only to be published in the Official Gazette, it is also required to be published in two newspapers, and there is a limitation of time within which notifications have to be published in the Official Gazette. The time limits can be found from the provisions of Sections 4 and 6 of the Act, which read as under :

4. Publication of preliminary notification and powers of officers thereupon- (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which atleast one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,--

to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle;

Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days'' notice in writing of his intention to do so.

6. Declaration that land is required for a public purpose.--(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made u/s 5-A, Subsection (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, Sub-section (1), irrespective of whether one report or different reports has or have been made wherever required u/s 5-A, Sub-section (2);

Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1),--

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1.--In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued u/s 4, Sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.--Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out pf public revenues.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it isneeded, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.

104. In Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, , a three Judges Bench of the SupremeCourt(M.H.Kania, CJ, and Dr. T.K. Thommen and Dr. A.S. Anand, JJ), Dr. A.S. Anand, J. gave the following interpretation to Sections 4 and 6 of the Act:

"It is settled law that the process of acquisition has to start with a notification issued u/s 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification u/s 4 is a condition precedent to the exercise of any further powers under the Act. Any notification which is aimed at depriving a man of his property, issued u/s 4 of the Land Acquisition Act has to be strictly construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the Courts. The object of issuing a notification u/s 4 of the Act is two fold. First, it is a public announcement by the Government and a public notice by the Collector to the effect that the land, as specified therein, is needed or is likely to be needed by the Government for the "public purpose" mentioned therein; and secondly, it authorises the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity not only the "public purpose" for which the acquisition proceedings are being commenced but also the

"locality" where the land is situate with as full a description as possible of the land proposed to be acquired to enable the "interested" persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non-suitability of the land for the alleged "public purpose" also. If a notification u/s 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad.

105. The Supreme Court while referring to its earlier judgment in Narendrajit Singh and Another Vs. The State of U.P. and Another, , also observed as follows:

"In Narendrajit Singh v. State of U.P., while dealing with the requirements of a valid notification u/s 4 of the Act, this Court observed that thedefect of non-mention of the locality where the proposed land was situate in the notification was a very serious defect vitiating the notification. In that, case, the schedule attached to the notification issued under Sections 4(1) and 17(1) of the Act read as follows :

SCHEDULE

District	Pargana	Mauza	Approximate area	For what purpose required	Remarks
Rampur	Bilaspur	Gokal Nagri	125 acres	For the rehabilitation of East Pakistan displaced families, under the Ministry of Rehabilitation, Govt. of India.	

"This Court opined that though Section 4(1) does not require the identity of the land which may ultimately be acquired to be specified with too many details but it undoubtedly casts upon the Government a duty to "specify the locality in which the land is needed". In Narendrajit Singh case, this Court also repelled the argument identical to the one raised by Mr. Thakur that since detailed particulars of the land had been given in the notification issued u/s 6(1) of the Act, the absence of those particulars in Section 4(1) notification was of no consequence. The Court said : (SCC p-129, para 10).

"In our view, the defect in a notification u/s 4(1) cannot be cured by giving full particulars in the notification u/s 6(1)"

Apart from the defect in the impugned notification, as noticed above, we find that even the "public purpose" which has been mentioned in the schedule to the notification as "residential" is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as invalid in law. There is no indication as to what type of residential accommodation was proposed or for whom or any other details. The State cannot acquire the land of a citizen for building some residence for another, unless the same is in "public interest" or for the benefit of the "public" or an identifiable Section thereof. In the absence of the details about the alleged "public purpose" for which the land was sought to be acquired, no one could comprehend as to why the land was being acquired and Therefore was prevented from taking any further steps in the matter."

106. What is stated hereinabove, is relevant while considering the vague boundary description mentioned in notification u/s 4 of the Act, and the unintelligible map which was stated to be available in the office of the Collector not even printed and published. The notification u/s 6 had to be published within time limited by Section 4 of the Act, i.e. within one year. There is adequate evidence in this case to show that Section 6 notification was not available with the distributors for distribution within the period of one year stipulated by the Act, it cannot be said that the Section 6 notification has been published in the manner mandated by the Act. It appears to us that there has been no publication of notifications, and as such the acquisition proposed by the notifications is liable to be quashed.

107. Mr. Lekhi also urged before us that the requirements of publication in the locality (Section 6 of the Act) has not been complied with in the instant case. And absence of publication in the locality is fatal to the notification, which stands vitiated on that account, as the procedural requirements of the provisions of Sections 4 and 6 have not been complied with. In this connection Mr. Lekhi invites our attention to the notification published u/s 4 of the Act, (full text thereof has been reproduced hereabove). Hesays that a reference to the description of the land which was proposed to be acquired as likely to be needed for public purpose is inadequate, inasmuch as the description which has given in the notification is a verbal one which is supposed to be supported by a map which is to be found in the office of the

Collector of Delhi. That map is not printed and published in the Official Gazette. Mr. Lekhi points out that no map was filed by the respondents in response to the notice to show cause which was issued in the instant case, and no Gazette has been produced showing that map was published as a part of the Gazette. The map did not accompany the newspaper announcements either. This submission led us to require the respondents to produce the map mentioned in the notification u/s 4 of the Act. We have examined a copy of a map, (which was stated by the Section 4 notification to be in the office of the Collector). Ms. Geeta Luthra who appears for the Delhi Administration, conceded that the map in the office of the Collector, was a map prepared by the Delhi Development Authority, and not by the Delhi Administration.

108. The map is clearly not issued with the authority of the Delhi Administration, as it does not say so. Factually the map appears to be a copy of the map prepared by the Delhi Development Authority. It cannot be the map prepared by the Delhi Government.

Secondly, it is also noticed that the map does not identify the various locations mentioned in the text of Section 4 notification. It does not identify the Wazirabad Barrage, the marginal bund, or any other land mark like the Batla House, Zakir Nagar, Ring Road, Power Station, Monkey Bridge. It needs another architect/ draftsman to understand, and indicate the identifiable points thereon. In other words it is unintelligible to a non specialist, or to an ordinary man, with no special knowledge of Map reading. We, Therefore, have to hold that the map in the Collector''s office is too vague for compliance with requirements of locality mandated by Section 4 of the Act.

109. I am of the view that in order to comply with the requirement of publication in the "locality" mentioned in the Section 4 of the Act, the map relied upon for determining the locality of the land likely to be acquired, must be published in the manner of publication mentioned in Section 4 of the Act, i.e. not only in the Official Gazette, but also in the newspapers, mentioned in Section 4 of the Act. Such publication is, easy in the present state of printing technology what is in common use. The fact is that today high definition (resolution) lenses are currently used in "offset" or computerised printing presses, and maps of any kind can be easily reproduced by such process. It is common to see maps in New-papers when Telephone Numbers are changed in a particular area. Maps can easily be printed in the Official Gazette. Non-publication of the map in the Official Gazette is fatal to Section 4 notification. As held by the Supreme Court in Narendrajit Singh v. State of Uttar Pradesh (supra), which was approved and followed in Madhya Pradesh Housing Board v. Moltd. Shaft and Ors. (supra), "the defect in Section 4 Notification cannot be cured by Section 6 notification".

110. It may be argued that giving site map of a very large area with identifiable points thereon, would be difficult. Such a contention has no force in view of what is

stated above about the high definition/high resolution lenses which are used currently in operating "off set" printing presses and computerised printing presses. It will make no difference whether the area proposed to be acquired is a large extent of land, or a small extent of land. Sufficiently identifiable areas can be marked on maps which can be easily published as a part of notification u/s 4 of the Act.

111.On our informing the respondents of our inability to locate any area on the map which was represented to be a map made available in the office of the Collector, a map was produced before us, on which areas were marked out, which map is almost of the same size as the one which was alleged to be in the office of the Collector. The map produced later for us, can enable any ordinary person to identify the broad outlines of the area which was proposed to be acquired. If such a map could be produced later, on our asking for it, we see no reason why it ought not to have been done in the first instance: Valuable rights of property of large-number of individuals were likely to be affected by the notification u/s 4 of the Act. In any case, it would be appropriate if power of eminent domain be exercised so as to ensure that persons likely to be affected by exercise of power get adequate notice of the imminence of its exercise, so that such persons are in a position to exercise rights given to them u/s 5A of the Land Acquisition Act by objecting to acquisition of that land. This not having been done, the notification u/s 4 of the Act has to be quashed.

112. There is another matter on which we have heard the parties, and that relates to the non publication in the locality as required by Section 6 of the Act. Mr. Lekhi''s argument was that keeping in view the nature of the documents which were produced by the respondents to support the contention of non publication in the locality, would show that all documents evidencing publication appear to be documents which have been prepared at one go. The important portions are left blank to be filled up later on. In fact, Mr. Lekhi has pin pointed certain notices which were alleged to have been published in the "PatwarGhars" of some villages, that they bear the words in different inks and in different hand writings, which clearly indicates that the subject matter of the writings was done at different times by different persons. According to Mr. Lekhi, what appears to have been done is that the notices were prepared at one time, and they were inserted into the files relating to different villages without writing filenames of the villages to which the alleged publications related.He also urged that there are some villages which have no "Patwar Ghar" at all, yet these are shown to have been published in the Patwar ghar of the village/revenue estate. There are some villages which are "Be Chiragh" (without lamps) villages, indicating that there is no habitation in these villages. He has thus strongly urged that there is forgery with regard to these notices produced by the respondents, inasmuch as on their face there are hand writings which are completely different from the text, and it is in that hand writing only that the names of the villages are found mentioned.

113. On these contentions being urged, Ms. Geeta Luthra who appears for the Delhi Administration conceded before us that the hand writing on these notices which appears to be in ink, was done in her office. This was apparently done to meet the charge of forgery leveled by Mr. Lekhi. She has asserted that there is no question of forgery in the instant case, that the hand writing on the face of some of these notices, was done in her office to enable the same to be filed with respect to all the villages. Inasmuch as these documents have added matter, it is not possible for me to hold that they are reliable evidence of publication in the locality.

114. Mr. Lekhi contends that villages of Chilla, Behlolpur Khadar and Kilokri has only one Patwari (revenue official). Village Nangli Razapur has no Patwari (revenue official). Next villages Okhla, Jasola, Khizarabad, Madanpur Khadar, Joga Bai has only one Patwari (revenue official), whereas from the record produced by the respondents there is an impression that each village has a distinctPatwari (revenue official). Mr. Lekhi''s contention regarding the notices taken as a whole, are that the report of the publication of the substance of the notifications are an attempt to perpetuate fraud. I am not prepared to go that far,

115. Mr. Lekhi says that there is no "Patwar Ghar" in Jasola, and, Therefore, the report at page 152 of the record that the substance of the notification was published in village Jasola is wrong report. He also points out that in the report regarding publication of substance of notification at page 154 the date of document is absent. According to him, the date of publication of the substance of notification is important as it is this date which starts limitation of 60 days for filing objections u/s 5A of the Act. That in the absence of such a date, it cannot be contended that the limitation for making representation u/s 5A of the Act has run out.

116. The report regarding publication of notice in Behlolpur Khadar is at page No. l69 of the record of CW. 2237 of 1990, and is dated 13.9.1989. In that, instead 13.9.1989, the writing of 13.7.1989, and the words "Behlolpur Khadar" are written in, hand with different ink. He also says that the note at the left hand bottom means that the document is placed in the file relating to village Nangli Razapur rather than village Behlolpur Khadar. In any case he says that village Behlolpur Khadar being a village without any residence ("Be Chiragh"), how could service be possibly effected? To which village had one gone to effect service? Mr. Lekhi contends that if there is no fraud, the publication of the substance of the notification cannot be considered to be an act done in the regular course of business, contemplated by the Evidence Act. I agree. These reports do not inspire confidence.

117. As regards hearing of objections u/s 5A of the Act,Mr. Lekhi contends that as has been held by a Division Bench of this Court in the case B.R. Gupta Vs. Union of India and Others, , it is not possible to hear a few hundred objections to the acquisition within a span of one or two days. In the instant case, hundreds of objections were filed. It is impossible that all have been heard. And, as such it cannot be said that the provisions of Section 5A of the Act have been complied with

in the instant case.

118. Having perused the documents regarding publication of the substance of the notification in the locality, I am not satisfied that these documents can be taken on their face value, as official documents usually are. There is substance in what has been stated by Mr. Lekhi that these documents are of doubtful veracity.

119. In view of what is stated above, I do not think that it is necessary for me to give a finding whether the writing done by the clerk of Court amounts to forgery or hot, and it would have been better if this kind of controversy has been avoided by not writing anything on official document, which is filed in Court. The official document produced in Court, ought to only have writings of the officials who dealt with it, and not of strangers.

120. There has been some contentions raised regarding the meaning of the word "locality" mentioned in the notification u/s 6 of the Act. In this connection Mr. Lekhi contends that the word "locality" used in the notification u/s 6 of the Act, must also give its meaning, and in that connection he refers to the meaning in the English Oxford English Dictionary, Second Edition, Volume VIII, wherein locality is defined as under :

1. The factor quality of having a place, that is, of having position in space.

2. The fact of being local, in the sense of belonging to a particular spot. Also pl. local characteristics, feelings, or prejudices.

3. The features or surroundings of a particular place.

4 a. The situation or position of an object; the place in which it is, or is to be found; esp. geographical place or situation, eg. of a plant or mineral.

b. A place or district, of undefined extent, considered as the site occupied by certain persons or things, or as the scene of certain activities.

6. Limitation to a country, district, or place.

He also refers to the Words & Phrases Permanent Edition 25, in which "locality" has been explained as follows :

The word "locality" is a word of somewhat limited signification, but it has purely a relative meaning.

The word "locality" signifies a particular-district; confined to a limited region;

opposed to "general"; limited by boundaries, largeorsmall--asaccountry,-astate, a county, a town, or a portion thereof.

121. In view of the aforesaid meaning of the word "locality, and in view of the fact that in the instant case, we are dealing with the Land Acquisition Act, and keeping in view of the fact that the revenue laws are already in operation in most of the parts

to which Land Acquisition Act applies, publication in the locality must mean atleast publication in the revenue estate in which the land which is likely to be acquired is situated. Therefore, the revenue estate must be the area in which publication of both the notifications under Sections 4 and 6 of the Act are made.

122. Mr. Lekhi has also referred, in this connection, to Hajari Vs. The State of M.P., Bhopal and Others, , in which Justice J.S. .Venna speaking for the Court, stated that the locality is the "smallest identifiable area". Inasmuch as large-extent of lands were sought to be acquired by notifications under Sections 4 and 6 of the Act, large chunk of different revenue estates were sought to be acquired. Locality for the area for publication must mean revenue estate from which land is proposed to be acquired.

123. In as much as Section 5A confers an important right on the owner of the land to object to the compulsory acquisition of land, as has been held in various. cases, and the provisions of Section 17 when invoked, destroy that right, it is necessary that the ground of urgency must be mentioned in the notification for acquisition on account of urgency. Merely because of the fact of some unauthorised construction are alleged to be taking place in some part of the land which is proposed to be acquired by some unscrupulous builders, cannot possibly be arground of urgency, as has been suggested by the affidavit of the respondent. The urgency postulated in compulsory acquisition of land, may be cases like the happening of raging fire, leading to destruction of lot of built up properties, or of tress and other green cover which needs to be saved. Urgency may come into existence on account of uncontrollable and unprecedented floods, or any other cause, but urgency, has to be specified in the notifications. The urgency provisions cannot be invoked because municipal authorities choose not to stop the unauthorised and illegal construction.

124. Mr. Lekhi also challenges the right of the respondents to channelise river Yamuna. Channelisation is mentioned in the notification u/s 6 of the Act. According to him the river Yamuna originates, as it does, from the hills of Uttar Pradesh, which comes down to the plains at Tajewala, and traverse parts of State of Haryana, Union Territory of Delhi, and thereafter the State of Uttar Pradesh until it merges with the Ganges at Allahabad, is obviously an inter-State ri.er. According to Mr. Lekhi all inter-State rivers are property of the whole nation, and there is constitutional prohibition for any one of the States or Union Territories to do anything with, respect to the river and the river waters, unless, it is in conformity with the requirement of the provisions of the Constitution of India, as finds mention in Article 262 thereof. According to him channelisation could be done only if authorised by law made by Parliament. Cannot be done by a Sections 4 and 6 notification. Provisions of the Constitution being supreme, there can be no quarrel with that.

125. Although none of the parties to the writ petition has referred to it, we have located the statute which is called the River Boards Act, 1956 (Act XLIX of 1956). The Preamble to the River Boards Act, 1956 is to provide for an establishment of River

Boards for the regulation and development of inter-State rivers and river valleys. This Act apparently came into force on 15.5.1957. Section 2 of the Act contains a statutory declaration that "it is expedient in the public interest that the Central Government should take under its control the regulation and development of inter-State rivers and river valleys to the extent hereinafter provided". Section 4 requires establishment of river Boards. The river Board is to exercise its jurisdiction within such limits of the river (including its tributaries, if any) or river valley as may be specified in the notification establishing the river Board. Section 5(2) says that a person shall not be qualified for appointment as a member unless, in the opinion of the Central Government, he has special knowledge and experience in irrigation, electrical engineering flood control, navigation, water conservation, soil conservation, administration or finance. By Section 13 of the said Act, the Board is to prepare schemes, including multi-purpose schemes, for the purpose of regulating or developing the inter-State river or river-valley and advising the Governments interested to undertake measures for executing the scheme prepared by the Board. The aforesaid provisions of the River Boards Act, 1956 go to show that the Parliament has intervened in the matter of development of inter-State rivers and river-valley, and the statutory development schemes have to be prepared and executed by the Boards constituted under that Act only. The schemes for development of inter-State rivers cannot be prepared by any other person. This conclusion follows from the legal principle laid down in AIR 1936 253 (Privy Council) and followed by the Supreme Court in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, and Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, , "that when a statute requires a thing to be done in a particular manner, it can only be done in that manner, or not at all. All other methods are forbidden.

126. In this view of the matter, the scheme for development of the river Yamuna which is obviously an inter-State river, can only be prepared under the River Boards Act, and not by any other person or body. The Delhi Administration or the Delhi Development Authority are not the River Boards, constituted under the Act, and, Therefore, they cannot be the proper persons who could plan for the development of inter-State rivers and river valleys, and any plan (like the Section 4 map mentioned hereabove) prepared by them would, Therefore, be contrary to the provisions of the River Boards Act, and cannot have either lawful or valid operations.

127. Much arguments were addressed before us regarding the non-existence of plans for channelisation of river Yamuna. The Delhi Development Authority and the Delhi Administration asserted that it was necessary that plans for channelisation must exist before the date of notifications under Sections 4 and 6 of the Act, and that Master Plan indicated the channelisation plan. These paragraphs have been reproduced hereabove, as excerpts from Master Plan for Delhi Perspective--2001. In my view these words cannot be elevated to the status of "Plans".

128. A number of cases have been cited before us for the proposition that there is no need to have any scheme or plan prepared for the purposes of channelisation of the river Yamuna. We shall have to examine each of them to see whether the cases cited help the respondents. One of the first cases which is cited is a 5-Judge constitutional bench case; Arnold Rodricks v. State of Maharashtra and Ors., 1966 SC 1788 decided by a majority of 3:2. On examining this case it is found that this case was mainly concerned with the concept of "excessive delegation" by the legislature, and also whether land could be acquired for making residential and industrial plots in South Salsetta Taluka of Bombay Suburban District, and whether the same was a "public purpose" postulated by Sections 4 and 6 of the Land Acquisition Act, particularly when, prior to acquisition, no scheme had been formulated for carving plots for residential and industrial purposes in the aforesaid locality. It must be borne, in mind that the Land Acquisition Act postulates acquisition only or public purpose and for a company. It is only the Town Improvement Act or the Town Development Act that postulates development schemes for town improvement or development.

130. In Arnold Rodricks and Another Vs. State of Maharashtra and Others, , the Court said in para23 col.2atpage 1799, "there is no law which requires a scheme to be prepared before issuing a notification under Sections 4 and 6 of the Act". This statement was obviously with reference to the situation as it then prevailed in Bombay. Not a general statement of law. Apparently, in Bombay at that time there was no enactment like the Delhi Development Act, 1957, with its mandatory provisions like Sections 7, 8 and 12, and prohibitory provision like Section 14, and no penal provision like Section 29 in operation in Bombay area.

131. In Delhi, however, all the above said provisions have been in operation since the enactment of the Delhi Development Act, 1957, and more rigorously since 1.9.1962, when the Master Plan for Delhi came into operation. In Delhi Sections 7 and 8 of the Delhi Development Act mandate the preparation of Master and Zonal Development Plan. Thus schemes or plans for development must exist. These came to be with the Master Plan coming into force on 1.9.1962. Section 14 of the Delhi Development Act prohibits use contrary to the Master Plan and the Zonal Development Plan, while the Proviso to Section 14 permits continuation of "non-approved" use to which land was being put prior to coming in force of such plans.

132. Section 29 deals with criminal prosecution of violations of the Master Plan.

133. Thus in Delhi, there is a law which mandates preparation of, and compliance with the Master Plan and the Zonal Development Plan, failure to comply with such plan being punishable. Master Plan and Zonal Plan being "Schemes" in Delhi there is a law that requires schemes of Master Plan to be prepared and observed.

134. In the aforesaid view of the matter, it is clear that the observation of the Supreme Court in Arnold Rodricks and Another Vs. State of Maharashtra and Others, would not apply to Delhi after the Master Plan of Delhi had come into operation on 1.9.1962. The Master Plan for Delhi was valid till 1982. Therefore, in view of what is stated above, in my view, vis-a-vis Delhi, it cannot be said that there is no law that requires scheme to be prepared before notification under Sections 4 and 6 of the Act can be made. This is a distinguishing feature as between the Bombay situation that existed at the time of Rodricks acquisition in Bombay, and the situation as it exists in Delhi after 1.9.1962. The observations in Arnold Rodricks''s case that there is no need to haveascheme or Plan, Therefore, could have no application to Delhi, especially after coming into force of the Delhi Development Act, 1957, and after the Master Plan had come into operation, on 1.9:1962.

135. There is also another fact which is required to be kept in mind, as far as Delhi is concerned, particularly in the context of plan for channelisation of River Yamuna. In Delhi since 1873 the Statute known as Northern India Canal & Drainage Act, 1873 has been in operation. By virtue of the definition of Section 3 of the said Act, a "canal" includes a "channel". This Act has been in operation in Delhi for over 100 years, Therefore, it is too late in the day to state that there is no equation between channel and canal, as far as Delhi is concerned. It would also be incorrect to say, as has been stated by the Counsel for the Delhi Development Authority, that the word "channel" means only what is stated by the Master Plan Perspective 2001. The Master Plan Perspective 2001 is nothing, but a document which contains proposals/scheme for development of Delhi under the provisions of the Delhi Development Act, 1957. It is subordinate to the Delhi Development Act, 1957. In any case, the Master Plan Perspective 2001 cannot supersede the provisions of the Northern India Canal and Drainage Act, 1873, as far as the meaning of the word "channel" is concerned. It is another matter that the word "channelisation" is nowhere defined in the Master Plan Perspective 2001. It is important to appreciate what this Statute declares; it equates a "canal" to a "channel".

136. "Channelisation" of river Yamuna, would mean that a natural perennial river like Yamuna, is to be so interfered with that, a perennial river which a large section of the population regard as holy, is to be converted, by alleged "planned development", into an artificial canal. Can there be anything which could be more destructive of the Bio-Ecological system of river Yamuna? Anything can be more perverse?

137. The next case which was cited was Munshi Singh and Others Vs. Union of India (UOI), decided by a three-Judge Bench of the Supreme Court. The facts in that case go to show that there was a proposal in the city of Ghaziabad, which is close to the city of Delhi, to acquire land. A notification was issued under Sections 4, 6 and 17 of the Act. The notifications had stated that the land was required for "planned development". The acquisition notices were challenged. It was contended that no

plan existed for development, and that valuable rights of the owners of the land u/s 5A of the Act were affected by the said notifications as no reasonable opportunity of persuading the authorities concerned that acquisition of property should not be made, was made available to the land owners. Paras 7 and 8 of the said judgment are important, and are reproduced here below:

7. Section 5A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. Wemayreferto the observation of this Court in Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, that the right to file objections u/s 5A is a substantial right when a person''s property is being threatened with acquisition and that right cannot be taken away as if by a side wind. Sub-section (2) of Section 5A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration u/s 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector u/s 5A(2). The Legislature has, Therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5A: (See Section 17(4) of the Acquisition Act).

8. As already noticed, in the notifications u/s 4 all that was stated was that the land was required for "planned development of the area". There was no indication whatsoever whether the development was to be of residential and building sites or of commercial and industrial plots nor was it possible for any one interested in the land sought to be acquired to find out what kind of planned development was under contemplation i.e. whether the land would be acquired and the development made by the Government or whether the owners of properties would be required to develop a particular area in a specified way. If the Master Plan which came to be sanctioned on September 4, 1962 had been available for inspection by the persons interested in filing objections or even if the knowledge of its existence on the part of the appellants had been satisfactorily proved the position may have been different. In that situation the appellants could not claim that they were unable to file objections owing to the lack of any indication in the notification u/s 4 of the nature of development for which the area was being requisitioned. On behalf of the State it has been pointed out that the appellants had themselves filed a copy of the Master Plan which was sanctioned on September 4, 1962 and that it was a matter of common knowledge that the Master Plan was under preparation. The details relating to the Master Plan and the Plan itself had been published in the local newspapers and the appellants could have easily discovered what the proposed

scheme was with regard to the development of the area in which they were interested. In view of the peculiar circumstances of these cases we gave an opportunity to the State to apply for amending of its return, since nothing had been said about these matters therein and to produce additional evidence in support of its allegations. Such a petition was filed and certain documents were sought to be placed on the record. After a careful consideration of the petition for amendment and the evidence sought to be adduced we dismissed the prayer for amendment as well as for production of additional evidence as we were not satisfied that the documents should to be produced were either relevant or were required to enable this Court to pronounce judgment.

139. For the reasons stated in the Munshi Singh''s case, the acquisition notifications were quashed.

140. The aforesaid observations of the Supreme Court in Munshi Singh''s case clearly establish that the Court was of the view that for justifying notification for acquisition for planned development, scheme for development must pre-exist, and not merely be under preparation. That some reports had appeared in newspapers about a Development Plan was not held to be enough. The Court clearly was of the view that the rights of the land owners u/s 5A of the Act are not to be rendered nugatory. These rights could be exercised only with reference to a plan. The Supreme Court also considered the judgment in Arnold Rodricks v. State of Mahamshtra (which was relied upon by the respondent). The Supreme Court (K.S. Hegde, A.N. Grover, and D.G. Palekar, JJ), in Munshi Singh''s case held, "the points which arose for determination in that case (Rodricks) were entirely different. And that in the Rodricks case public purpose was stated with sufficient particularity, namely, for development and utilisation of the land as an industrial and residential area.

141. In the instant case no such scheme has been shown to us, no plan, whether detailed or vague, shown to us (except an apparently discarded and broken down "Model") despite the fact that such scheme for a canal/channel must be prepared before-hand to show the size of, and dimensions of and the alignment of the channel/canal. Without such a plan, carrying out of any building, or engineering activity in, over, or under river Yamuna would be extremely risky to public welfare and the river Bio-Ecological system. That is why Sections 30-A(l)(a) and 30-A(2) of the Northern India Ganal & Drainage Act, 1873, requires such a plan. These provisions were added to the said Statute, for Punjab and Haryana. There is no amendment for Delhi, perhaps because there are canals emanating from rivers in Punjab are in Punjab and Haryana, including canals which are off takes from the river Yamuna (like the western Yamuna canal) but there are now no canals in Delhi.

142. The preamble of the Northern India Canal and Drainage Act, 1873 recognises that State Government is entitled to use and control for public purposes the water of all rivers and streams flowing in natural channels, and of all lakes and

othernatural collections of still water; and to amend the law relating to irrigation, navigation and drainage in northern India. It applied to the States of Uttar Pradesh, Punjab and Delhi. The said Sections 30-A(1) and 30-A(2) of the Northern India Canal & Drainage Act, 1873 reads as under :

30-A; (1) Notwithstanding anything contained to the contrary in this Act and subject to the rules prescribed by the State Government in this behalf, the Divisional Canal Officer may, on his own motion or on the application of a shareholder, prepare a draft scheme to provide for all or any of the matters, namely,--

(a) the construction, alteration, extension and alignment of any watercourse or realignment of any existing water-course;

(b) reallotment of areas served by one water-course to another;

(c) the lining of any water-course;

(cc) the occupation of land for the deposit of soil from water-course clearances;

(d) any other matter which is necessary for the proper maintenance and distribution of supply of water from a water-course.

(2) Every scheme prepared under Sub-section (1) shall, amongst other matters, set out the estimated cost thereof, the alignment of the proposed water-course or realignment of the existing water-course, as the case may be, the site of the out-let, the particulars of the shareholders to be benefited and other persons who may be affected thereby, and a sketch plan of the area proposed to be covered by the scheme.

144. It is obvious that under the alignment, and dimensions of the "Channelised" River Yamuna are known the owners who are objecting to the acquisition of their land cannot effectively do so, unless a plan of "line of flow" of the Canal is known. In the absence of such an alignment plan the rights granted by Section 5A are rendered meaningless.

145. The next case which is cited by the respondents for saying that there need not be any plan before notifications under Sections 4, 6 and 17 are made, is the judgment of the Supreme Court in Aflatoon and Others Vs. Lt. Governor of Delhi and Others, , delivered on 23.8.1974, Justice Mathew speaking for the Court, was of the view that "in the facts and circumstances of the case, we do not think that the appellants were vigilant the writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners. The Court also observed that "the Government have allotted large portion of the land after the acquisition proceedings were finalised to Co-operative housing societies. To quash the notification at this stage would disturb the rights of third parties who are not before the Court". The Court also observed that "we have already held that the appellants and the writ petitioners cannot be allowed to challenge the validity of the

notification u/s 4 on the ground of laches and acquiescence". The aforesaid observations show that theAflatoon''s case was not dealt with by the Supreme Court on the ground as to whether it was mandatory for plan to pre-exist the acquisition or not.

146. In any case one fact has to be borne in mind, i.e. even before the Master Plan was prepared for Delhi, there was an Interim General Plan for Delhi, and this was in existence at the time the notification in Aflatoon''s case were issued. So there was a development plan in existence, The facts of Aflatoon''s case were different. This case does not support the respondents.

147. In the ease reported 2nd (1974) 2 Del (RajKumar and Anr. v. The Union of India & Ors), a Division of this Court (T.V.R. Tatachari &B.G. Misra, JJ), after considering judgment of the Supreme Court in Muttshi Singh''s case (supra), and because of the fact that the Interim General Plan existed, did not apply what is stated by the Supreme Court in the Munshi Singh''s case, to RajKumar''s case, in fact could not do so because plan for development existed in the shape of the Interim General Plan, whereas in the case of Munshi Singh, there was no plan in existence till the notification for acquisition was issued. Whereas there was no scheme for development of Ghaziabad in Munshi Singh''s case, there was a scheme for development of Delhi in the shape of Master Plan for Delhi, in Raj Kwnar''s case. The said case, Therefore, has no application to the case before us.

148. This Court also dealt with the question of acquisition of land in village Garhi Naraina in the cantonment area of Delhi, in the case of P.S. Gill and Others Vs. Union of India and Others, , this Court came to the conclusion that ""the cantonment area is included in the Planning Division, as well as Use Zones of Master Plan". The Court also came to the conclusion that in their opinion "it would not be correct to say that the Interim General Plan and the Master Plan have no plan at all for the cantonment area". At the same time the Court said in para 50 that "at the same time it (scheme or plan) should not be entirely something in the air, not even conceived of in the mind of the Government. What is necessary is that there should be an indication of the broad lines of development for which it will be acquired and that is there in this case". Thus having found that there is a plan in existence which pre-existed the acquisition notification, the challenge to acquisition for planned development was repelled. P.S. Gill''s case has no application to the case before us.

149. It appears to me that the observations made in the case P.S. Gill and Others Vs. Union of India and Others, , that, "the public purpose to be achieved is that certain areas in Delhi are likely to grow rapidly in an unsystematic manner resulting in several problems and that this can be prevented only by the Government acquiring those lands developing them, or getting them developed and then reorganizing and redistributing them in a systematic and organized manner", is likely to mislead inasmuch as the process of planning must start for any building or engineering activity by first becoming aware of the land for which planning is to be done by the

Planner, by familiarising himself with its boundaries, size, topography and contours, and planning must start with conception of what is proposed to be done on that land. That concept can thereafter be translated into a sketch or plan, the sketch or plan has to be accurately converted into a drawing drawn to scale. Thereafter a number of working drawing would be prepared, which would go into matters of details of the plans drawn to scale, so that no difficulty is experienced in the matter of execution of what is planned to be achieved.

150. This being the essence of planning, as far as development for the purposes of carrying out a building or engineering activity is concerned, I see no difficulty in, or difference between, planning for a small project, or planning for a large project. (Malayasia planned for and built the tallest building in the world--The Petronas Building). For both, large or small projects, attention has to be paid to the matters of details, to facilitate execution in accordance with the plans. It is, Therefore, quite wrong to suggest that when large scale planning is to be done, it is not possible to do any planning at all. Even the smallest part of a large area can be conceptualised and planned on paper. Plans can be converted made as a working drawing on paper. This should be obvious from the fact that a large city like the city of Chandigarh, the capital of Punjab, was conceived, planned and developed from scratch, as a brand new city, and the whole city has been created. The planners cannot excuse themselves from the rigours of Section 5A of the Act, by saying that it is not possible to plan for a large area. In fact such a response would be completely evasive and unjustifiable response.

151. From what is stated above, it is quite clear that the statement made in P.S. Gill''a case at page 663, that "Actual planning will always be quite far behind the necessities of the situation" is quite misleading. If such a thing happens there is faulty planning, by not planning for far enough. One plans for the future, not the past. Such faulty planning requires no support from law. It has to be struck down as arbitrary and not unreasonable.

152. This Court again considered the matter of challenge to acquisition of land with reference to planned development of Delhi in the case of Munni Lal and Others Vs. Lt. Governor of Delhi and Others, . This case was slightly different from the other cases, inasmuch as the notifications for acquisition of land for planned development were issued on 5.11.1980 u/s 4 of the Act, at a time when the Master Plan for Delhi, which had already come into effect on 1.9.1962, was still in operation. The challenge in this case was also somewhat different. The difference lay in asserting that the Master Plan for Delhi postulated use of the land which was sought to be acquired for planned development, whereas the Master Plan for Delhi which was in force at the time, and which had come into being for planned development of Delhi, had postulated specific use of the land for agricultural purposes, and inasmuch as the land was already being used for the same purposes, there could be no other planned development. The Court came to the conclusion that there was sufficient

material on record of that case to show that the petitioners were aware of the fact that the amendments to the Master Plan were being considered, and as to what these amendments would be. Therefore, they were not prejudiced in filing objections to the proposed acquisition u/s 5A of the Act, and as such, this Court was pleased to dismiss the said petition. It is not known whether an appeal from this judgment was decided by the Supreme Court. Mtinni Lal''s case has no application to the facts of this case.

153. The Supreme Court (J.S.Verma, N.P.Singh and B.N. Kirpal, JJ) in Pratap and Others Vs. State of Rajasthan and Others, dealt with some appeals from Rajasthan, relating to acquisition of land. The Supreme Court relied upon its earlier pronouncements in Gandhi Grah Nirman Sahkari Samiti Ltd. ect. etc. Vs. State of Rajasthan and others, , wherein it had stated that "the State Government, in any of its departments, may decide to develop the urban area under the Act and in that case it would not be necessary for the Government to have a scheme framed under Chapter V of the Act..... It is thus clear that the State Government has the power to acquire land either for the execution of the schemes framed by the Trust under Chapter V of the Act or for any other public purpose under the Act".

154. As there were two methods for acquisition available to the State of Rajasthan, one for the purposes of a scheme prepared by the Urban Improvement Trust, and the other for any other public purpose, acquisition of land for a public purpose was upheld, as "even if there is no scheme prepared or finalised, under a Housing Board or Urban Improvement Act, acquisition could be validly made under the provisions of the Land Acquisition Act for a public purpose or under the Rajasthan Urban Improvement Act for the purpose of improving or for any other purpose under the Act".

155. The Rajasthan''s case decided by the Supreme Court is, Therefore, different inasmuch as it is statu torily permissible to acquire land without a scheme, so long as there is a public purpose for which the same is acquired.

156. In Delhi, however, as Master Plan is in operation, acquisition has to be in accordance with the Master Plan. To Delhi, the Northern India Drainage & Canal Act, 1873, will apply to a canal/channelisation scheme. Also the provisions of the River Boards Act, 1956 apply. So the aforesaid cases will not apply to any alleged "channelisation" of River Yamuna.

157. In any case, when a canal is to be built or channelisation is to be attempted it can only be done in accordance with the provisions of the Northern India Canal & Drainage Act, 1873, and the River Boards Act, 1956. Such a plan can be validly made only by that person or body who is authorised by law to do so. The authorised body or person shall have a site plan prepared, showing the alignment of the canal or channel, and such a plan has been published in the manner postulated by the Act, and public objections thereto have been invited and considered, not otherwise. The

relevant provisions of the River Boards Act, 1956 are reproduced hereinbelow:

2. Declaration as to expediency of control by Central Government.--It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation and development of inter-State rivers and river valleys to the extent hereinafter provided.

(See the Constitution of India, Schedule. VII, List 2, Entry 17 and List 1, Entry 50.)

5. Composition of Board.--(1) The Board shall consist of a Chairmanandsuch other members as the Central Government thinks fit to appoint. (2) A person shall not be qualified for appointment as a member unless, in the opinion of the Central Government, he has special knowledge and experience in irrigation, electrical engineering, flood control, navigation, water conservation, soil conservation, administration or finance.

13. Matters in respect of which a Board may be authorised to tender advice.--A Board may be empowered under Sub-section (1) of Section 14 to perform all or any of the following functions, namely :

(a) advising the Governments interested on any matter concerning the regulation or development of any specified inter-State river or river-valley within its area of operation and in particular, advising them in relation to the co-ordination of their activities with a view to resolve conflicts among them and to achieve maximum results in respect of the measures undertaken by them in the inter-State river or river-valley for the purpose of-

(i) conservation, control and optimum utilisation of water resources of the inter-State river;

(ii) promotion and operation of schemes for irrigation, water-supply or drainage;

(iii) promotion and operation of schemes for the development of hydro-electric power;

(iv) promotion and operation of schemes for flood control;

(v) promotion and control of navigation;

(vi) promotion of afforestation and control of soil erosion;

(vii) prevention of pollution of the waters of the inter-State river;

(viii) such other matters as may be prescribed;

(b) preparing schemes, including multi-purpose schemes, for the purpose of regulating of developing the inter-State river or river-valley and advising the Governments interested to undertake measures for executing the scheme prepared by the Board;

(c) allocating among the Governments interested the costs of executing any scheme prepared by the Board and of maintaining any works undertaken in the execution of the scheme;

(d) watching the progress of the measures undertaken by the Governments interested;

(e) any other matter which is supplemental, incidental or consequential to any of the above functions.

158. The plan for development of an inter-State river like river Yamuna, Therefore, must make adequate provision for irrigation and water supply as postulated by Section 13(a)(ii) of the River Boards Act, 1956. It is noteworthy that the River Boards Act is prior in point of time to the Delhi Development Act, 1957. River Planning must be excluded from Town Planning.

159. One of the primary concerns of all citizens of India should be that the natural resources of India should be conserved--not wantonly damaged or destroyed. Neither the actions of men, nor the actions of any Municipal Body or authority, nor the actions of any State should be such as to cause irretrievable damage or destruction of a natural resource. River Yamuna is a primary natural water resource for a considerable part of Northern India, particularly of some cities established on its banks hundreds of years ago. Cities like Ambala, Panipat, Delhi, Agra, Etawah etc.

160. By the actions of two States of Haryana and Uttar Pradesh, of dividing the waters of Yamuna between themselves in the proportion of 2/3rd for Haryana, and l/3rd for Uttar Pradesh at Tajewala, and leaving no water in the River Yamuna, for the lower riparian cities like Ambalajagadhari, Panipat, Delhi, Agra etc., is an act of gross irregularity, if not arbitrariness and unreasonableness. It is self evident that the River Yamuna down stream of Tajewala, and the aforesaid cities should not be deprived of natural waters. To enable Yamuna to survive as a perennial river, it must receive 3/4th of the water available at Tajewala. The States of Haryana and Uttar Pradesh must discipline the users qf canal waters of Wester and the Eastern Yamuna Canal, to use modern methods of irrigation like the sprinkler systems, or computer controlled drip irrigation system, used for ensuring optimum use of scarce natural water resources. This is necessary to ensure that there is adequate water supply to the aforesaid cities down stream of Tajewala. The method of using the canal waters to flood the fields is wasteful.

161. As stated above, the respondents Delhi Development Authority or Administration in the instant writ petition, despite being given numerous opportunity to do so, have failed to produce any plan, showing alignment and dimensions of the canal/channel. They have failed to produce any plan prepared by the authorised person under Northern India Canal and Drainage Act, 1873, or by the authorised body under the River Boards Act, 1956. These two being the only bodies who could do so.

162. The Delhi Development Authority is a body created for urban planning. Statutorily the Delhi Development Authority cannot do any River Planning for an inter-State perennial River like River Yamuna. For the aforesaid reasons it cannot be said that any statutorily valid plan is in existence for making the canal/channel.

163. Since the aforementioned two Statutes, the Northern India Canal and Drainage Act, 1873, and the River Boards Act, 1956, require a thing to be done in a particular manner, it can only be done in that manner, or not at all. All other methods are forbidden. The notifications suffer from this fatal defect that no plan of the channel/canal which is proposed to be made, has been prepared. This is despite the fact that the Poona Institute had published its report, and submitted as far back as 1993, and even in August 1996 when we concluded the hearing of the case, no statutory plan has been produced.

164. In view of what is stated hereabove, I am of the view that the instant case is not covered by any of the aforesaid judgments, inasmuch as what is sought to be acquired for alleged planned development of Delhi is the river bed and the flood plains of the river Yamuna which is an inter-State river, development whereof is within the exclusive jurisdiction of the inter-State River Boards which are to be created by the Central Government. In any case, it is to be noted that the land which is sought to be acquired, is for channelisation of river Yamuna, and reliance placed upon the words used in the Master Plan for Delhi Perspective - 2001 for that purpose. The words used in the Master Plan are to be found at page 116 of the Gazette of India Extra Ordinary dated 1.8.1990, which read as follows : -

River Yamuna is to be made pollution free through various measures. On the big expanse of its banks, large recreational areas to be developed and to be integrated with other urban developments so that the river is an integral part of the city-physically and visually.

165. The aforesaid words clearly mean that whatever is to be done in connection with the river Yamuna, its banks and flood plains, is to be done after the river is made pollution free. It is common knowledge that even today in the year 1996, the river Yamuna is not pollution free. In fact efforts are currently on to ensure that sewage treatment plants of adequate capacity and size are put in place to ensure that the drains that discharge water in the river Yamuna do so after the water has been treated. This is evident from the observations of the Supreme Court in Jai Narain and Others Vs. Union of India and Others, , which are to the following effect:

Delhi--the capital of India--one of the world''s great and historic cities has come to be listed as third/fourth most polluted and grubbiest city in the world. Apart from air pollution, the waters of River Yamuna are wholly contaminated. lt is a paradox that the Delhites--despite river Yamuna being the primary source of water supply--are discharging almost totality of untreated sewage into the river. There are eighteen drains including Najafgarh drain which carry industrial and domestic waste

including sewage to river Yamuna. Thirty-eight smaller drains fall into Najafgarh drain. The Najafgarh drain basin is the biggest polluter of River Yamuna. Eight of the drains including Najafgarh drain are untrapped, four fully trapped and remaining six are partially trapped. All these eighteen drains, by and large, carry untreated industrial and domestic wastes and fall into River Yamuna. The River Yamuna enters Delhi at Wazirabad in the North and leaves at the South after traveling a distance of about twenty-five kilometres. The water of River Yamuna till it enters Najafgarh is fit for drinking after treatment, but the confluence of Najafgarh drain and seventeen other drains makes the water heavily polluted. The water quality of Yamuna, in Delhi stretch, is neither, fit for drinking nor for bathing. The BioChemical Oxygen Demand (BOD) level in the river has gone so high that no flora or fauna can survive. It is of utmost importance and urgency to complete the construction of the STPs in the city of Delhi. The project isof great publicimportance. lt is indeed of national importance. We take judicial notice of the fact that there was utmost urgency to acquire the land in dispute and as such the emergency provisions of the Act were rightly invoked. We reject the first contention raised by the learned Counsel.

So far as the second contention raised by Mr.Vashisht, the same is mentioned to be rejected. Whatever may be the user of the land under the Master Plan and the Zonal Development Plan the State can always acquire the same for public purpose in accordance with the law of the land. In any case the object and purpose of constructing the STPs is to protect the environment, control polution and in the process maintain and develop the agricultural green."

166. Yamuna not having" been made pollution free, the question of acquisition of the land for channelisation of the river Yamuna by notification dated 23.6.1989 cannot possibly arise, as that itself is contrary to what is stated in the Master Plan for Delhi Perspective - 2001.

167. Whatever is stated in the text of the Master Plan cannot be regarded as law; The statements made therein must be examined for its ordinary meaning, and what is asserted, one should determine whether what is stated therein was sufficient by itself to amount to "planned development of Delhi or not". In other words, every word which is stated in the written text of the Master Plan, cannot be taken at its face value, without ascertaining what the words convey and mean. In terms of what is stated hereinabove, clearly establishes that planning for the river Yamuna, assuming such a planning can be done by the Delhi Development Authority despite the provisions of the River Boards Act, could have been done in the year 1983 or even in 1996, inasmuch as its terms are so far not satisfied, and they are not likely to be satisfied until such time as the waters of all the drains discharge in the river Yamuna are made pollution free. A reference to what has been stated in the River Boards Act make it amply clear that planning for inter-State rivers, their flood plains and the river valleys is not a matter of ordinary planning. The planning has to be undertaken by persons who are experts in the matter of irrigation, electrical

engineering, flood control, navigation, water conservation, soil conservation etc., as the rivers flow their waters exert very great force or great forces upon the banks, and in the natural course of their flow they erode the soil of the banks and create sand bars and consequent new channels.

168. According to Civil Engineers, channelisation of a river means changing the course of the river. Determining new course of the river by changing the course of the river, will depend upon the quantity of the water which flows in different seasons through the river at a particular point, forces which are generated by the water flow at different times and the extent and quantity of the actual water flow has to be known so that the depth of the channel can be kept and maintained and suitable embankments constructed to ensure that the flow of river will not cause any kind of erosion, nor will the flow of water in the river will be such as to over flow the embankments and cause floods.

169. It is for this reason that the Parliament in its wisdom has treated inter-State rivers (and their flood plains) and river valleys as something needing special laws and special type of planning through specialised bodies. The concept of town planning, which the Delhi Development Authority is expected to be familiar with for planned development of Delhi, cannot be attributed to those persons who need to plan for the inter-State river channels, their flood plains and river valleys.

170. Admittedly, even till today in 1996, despite the fact that it was stated before us that in the year 1993, the Institute at Pune has submitted a report, to the Delhi Development Authority, the new course of the river Yamuna or channelisation of the river Yamuna, if at all recommended by the said Institute, have not been given any final shape. In any case, even if final shape has been given, (and it is reiterated that no final shape has been given), as no plan has been produced before us, the acquisition of land for the same cannot be done in terms of the Master Plan for Delhi, because its own terms itself postulate making the river Yamuna pollution free before the course of the river is channelised or altered. Yamuna today is not pollution free. Master Plan, Therefore, if applicable cannot be complied with.

171. Yamuna River is as old as India is old, it has already existed forever. No development can last longer than forever. Yamuna has been there in India since forever. It is better to preserve it than to have "developments", which may be proposed for it by any person, or body, for any building or engineering activity.

172. As the provisions of the River Boards Act, 1956 require that river planning be done by River Boards created under that Statute. Planning for a river is statutorily recognised as being distinct from planning for urban development/ improvements. None of the respondents, including the Delhi Development Authority has any jurisdiction to do any planning for River Yamuna. This is the conclusion that flows from the principles of statutory interpretations evolved in early cases like tavlor v. Tavlor (1875) 1 Ch D 426, and Nazir Ahmad v. King Emperor 1936 P C, 253(2)1 and

followed by the Supreme Court in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, and Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, , "that when a statute requires a thing to be done in a particular manner, it can only be done in that manner, or not at all. All other methods are forbidden", Thus there is a prohibition against planning for river Yamuna being done by any person or body except the River Board made for River Yamuna, or the authorities under the Northern India Canal and Drainage Act, 1873.

173. In the facts and circumstances of this case, there has been no effective opportunity to exercise the rights of the petitioners u/s 5A of the Act.

174. In the instant case, there is no scheme in law. For the reasons stated in the Munshi Singh''s case by the Supreme Court, the notifications cannot be sustained.

175. In the circumstances, I am of the view of the judgments of the Supreme Court, and of this Court, which appear to say that the land can be acquired for planned development of Delhi, have necessarily to be confined to the development in the sense of town planning and architecture. It cannot be extended to planning for inter-State rivers and river valleys, for which special laws exist. In any case the Master Plan for Delhi has no bearing upon the planning for the inter-State river Yamuna, except that it is the responsibility of the Town Planner of Delhi that the drains which discharge water into the inter-State river, like the river Yamuna, are made pollution free. It is only after the river Yamuna is made pollution free that a River Board or River Boards set up under the River Boards Act, 1956 that plans for channelisation can be taken up and if necessary some acquisition of land can be undertaken, not otherwise.

176. In the instant case, however, given the reality that the River water course has only limited quantity of water, the moment the water course is made deeper, the width of it can be be reduced. When the width of the river is reduced, itmust follow that some land, which used to lay beyond the banks of the natural river water course, will become available for other uses.

177. If channelisation is going to have the consequence of additional land becoming available, there could not possibly be any need for acquisition of additional land for channelisation, As some land is going to be surplus from the river itself. If the above facts are kept in mind by any person, who requires to record his "satisfaction", regarding the need for acquisition, how could he record satisfaction to the effect that additional land is required for the purposes of channelisation? Same would be the conclusion, if plans drawn to scale are given to a person like the Lt Governor, who has to record the satisfaction. It would be clear to him that by channelisation additional land will become available.

178. What appears to me, is clear that if any plans drawn to scale for channelisation of River Yamuna had been prepared at any time before the satisfaction of the Lt. Governor is recorded, in connection with such an acquisition, no such satisfaction

could be arrived at. Without such plans the "satisfaction" is not good satisfaction in law. To me, it appears that such satisfaction is arbitrary, such satisfaction is unreasonable, and cannot be arrived at by any reasonable person. The acquisition being arbitrary, would have to be quashed.

179. There is no substance in the plea of the respondents that it is not open to the petitioner to contend that Section 5A of the Act has not been complied with. Every constitutionally valid provision of a valid statute has to be complied with. Such a plea is always available unless that provision-contains some words of limitation. There being no words in Section 5A that limits its applicability, there is ample justification in permitting pleas based on Section 5A to be raised. The above said view is supported by the observations in the Supreme Court judgment in Munshi Singh and Others Vs. Union of India (UOI), .

180. In this view of the matter, the writ petition succeeds, and for the reasons stated hereinabove, the notifications for acquisition of land for channelisation of the river Yamuna which had not complied with the provisions of Sections 4 and 6 of the Act are not valid in law, and are hereby quashed.

181. I give directions that the flood plains of the river Yamuna, as it flows through Delhi, should be clearly got demarcated with the help of the revenue records, which already contain sufficient material, to indicate which lands adjacent to the river Yamuna are flood prone, as they are located in the flood plains ("Sailab" lands), and inasmuch as it is dangerous to build on the flood plans without there being adequate flood control measures, I issue an injunction,. restraining carrying of any construction activity of any nature or description in the flood plains of the river Yamuna, or in the river bed, except insofar as such construction activity is necessary or incidental to the construction of bridges, weirs, barrages on the river Yamuna. I also direct that in case the river Yamuna has to be channelised, then the Union of India should act in accordance with law and constitute River Boards, if not already constituted, who would make plans for channelisation of the river Yamuna.

182. With the quashing of the notifications, the acquisition of the land which has been done, would have to be set aside. However, we are informed that some of the persons whose land has been acquired, have accepted compensation for the same. In case these persons have accepted the factum of acquisition, then on payment of the market value thereof, as determined in accordance with law, these land would belong to the person who have paid out compensation therefore. If those persons whose land has been acquired, and have received compensation, wish to avail the benefit of quashing of the notifications, then they shall have to pay back the amount of compensation received along with interest due thereon at the rate of 15% per annum from the date of receipt of the payment till the repayment. Thereafter their land shall stand restored to them if they have been dispossessed there from.

The petitioners shall also have their costs.