

(2002) 02 BOM CK 0104

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 3581 of 2001

Shivaji Jadhav, Shahaji Jadhav,
Mahadeo Ingle and Dagdubai
Bidve

APPELLANT

Vs

The State of Maharashtra, The
Collector, Latur. District Latur,
The Sub Divisional Officer and
Land Acquisition Officer, Latur,
Vikas Sahakari Sakhar Karkhana
Ltd. and Amit Deshmukh and
Chairman of Vikas Sahakari
Sakhar Karkhana Ltd.

RESPONDENT

Date of Decision: Feb. 22, 2002

Acts Referred:

- Companies Act, 1956 - Section 3
- Land Acquisition Act, 1894 - Section 10, 11, 12, 13, 14

Citation: (2002) 4 MhLJ 230

Hon'ble Judges: N.H. Patil, J; B.H. Marlapalle, J

Bench: Division Bench

Advocate: B.N. Patil, for the Appellant; R.B. Raghuwanshi, Special Counsel, E.P. Sawant, Government Pleader and V.D. Hon, for the Respondent

Final Decision: Allowed

Judgement

1. We had heard this petition on 23.1.2002, 24.1.2002 as well as on 4.2.2002. After the respondents had filed reply, the petition was heard at length on 20.2.2002.
2. Rule. The learned Government Pleader waives service for respondents no.1 to 3 and Shri Hon, learned Advocate waives service for respondent no.4. The respondent no.5 has been impleaded in his capacity as Chairman of respondent no.4 Karkhana and there is no relief sought against him. He is a formal party.

3. Rule taken up for final hearing forthwith.

4. The petitioners are residents of village Nivali and Borgaon of Latur taluka and are agriculturists. They hold agricultural lands in Gat No.47 and 48 and the agricultural lands owned by them were sought to be acquired by the respondents no.1 to 3 at the instance of respondent no.4 by issuing notification dated 8.2.2001 u/s 4(1) of the Land Acquisition Act, 1894 (the Act for short). The land sought to be acquired from the petitioners is, as under:

Petitioner Number & Name Area Gat No.

5. The petitioners had submitted their objections during the course of section 5A enquiry and when their objections were rejected, they filed this petition on or about 23rd July, 2001. During the pendency of this petition, the respondents nos. 1 to 3 issued corrigendum to the notification u/s 4(1) of the Act and the same was published in the Government Gazette on 20.12.2001. Fresh enquiry u/s 5A of the Act was undertaken and the objections raised by the petitioners were again rejected.

6. The petitioners contend that by the subject acquisition, they would be landless, the land is being acquired under the colourable exercise of power and with malafide intentions, the respondent no.4 has surplus land admeasuring about 100 acres and it does not require any further land, the respondent no.4 has issued press statements declaring that it has a crushing capacity of 1250 M.T. and about 100 acres of land is reserved for future expansion. In addition, an advertisement issued by the respondent no.4 was published in some of the local newspapers for leasing out shops to be constructed in the premises of the respondent no.4 factory thereby, indicating that the land was being utilised for commercial purposes and additional land was being sought for the same purpose. The acquisition under challenge is not for the purpose which is mentioned in the acquisition notice. In the original notification u/s 4(1) of the Act, the purpose for which the land was being sought was stated to be Educational and Cultural Schemes. The same was changed, in the amended notification published in the gazette on 20.12.2000, to Farmers Home, Sugar School and Cane Yard. This was done solely because the respondents nos.1 to 3 took note of the challenge raised in this petition that the original purpose mentioned in the notification published on 18.1.2001 did not fall within the ambit of public purpose as defined under the Act and at no point of time, the schemes for which the land was sought to be acquired, have been sanctioned by the State Government prior to issuance of the original or amended notification u/s 4 of the Act. In support of the allegations on the ground of colourable exercise and malafides, the petitioners stated that the subject land is not located adjacent to the land which was already acquired and the land is exactly opposite the respondent no.4 factory premises, separated by a public road. The respondent no.4 does not require any further land specially, when it has surplus land in its possession and the existing land of about 200 acres acquired by the respondent no.4 has virtually enveloped some private land which is not sought to be acquired. It is also

contended that the respondents no.1 to 3 have acted in haste and committed illegalities as well as they have not verified the Government policy of not acquiring the land when the land-holders become landless, only because of influence of the respondent no.5. We make it clear that we need not consider this issue and specially, when we have already held that the respondent no.5 is only a formal party. The land is sought to be acquired for respondent no.4 and we have to examine only the role of respondent no.4 vis-a-vis the contentions raised by the petitioners challenging the action of respondents no.1 to 3.

7. The affidavits on behalf of the respondents no.1 to 3 and 4 have been filed before us and the petition has been opposed. At one stage, the State Government as well as the respondent no.4 had relied upon the provisions of section 3(cc) read with section 3(f)(iv) of the Act and submitted that the respondent no.4 being a society owned and controlled by the State, the land under acquisition was for a public purpose within the meaning of section 3(f)(iv) of the Act. However, this contention was not subsequently pursued and rightly so.

8. The learned Special Counsel appearing for the respondents no.1 to 3 emphasized that the subject acquisition is for the public purpose though it is at the instance of respondent no.4 and none of the petitioners would become landless. He also submitted that the acquisition is for the welfare of all the shareholders of respondent no.4 and there is no likelihood of any prejudice to any of the petitioners. The petitioners are entitled for compensation under the scheme of the Act and there was no intention to acquire petitioners land forcibly. The allegations of colourable exercise of power and malafides etc. have been refuted. In defence of the acquisition proceedings, the learned Special Counsel has relied upon the following decisions of the Apex Court:

- 1) [Smt. Somavanti and Others Vs. The State of Punjab and Others,](#) .
- 2) [Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others,](#) .
- 3) Jage Ram and others v. State of Haryana (AIR 1971 SC 1035).
- 4) [State of Gujarat and Another Vs. Sankalchand Khodidas Patel \(Dead\) by L.Rs.,](#) .
- 5) [Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others,](#) .
- 6) [Bajirao T. Kote \(Dead\) by Lrs. and Another Vs. State of Maharashtra and Others,](#) .
- 7) [H.M.T. House Building Co-operative Society Vs. Syed Khader and others,](#) .
- 8) [State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc.,](#) .
- 9) [Scindia Employees" Union Vs. State of Maharashtra and Others,](#) .
- 10) [Venkataswamappa Vs. Special Deputy Commissioner \(Revenue\),](#) .

11) State Govt. Houseless Harijan Employees Association v. State of Karnataka and others AIR 2001 SC 437 .

9. The respondent no.4, on the other hand, stated that the subject land was sought to be acquired for a co-operative society registered under the Maharashtra Cooperative Societies Act, 1960 which is a company within the meaning of section 3(e)(iii) of the Act and the acquisition at its instance was for a public purpose within the meaning of section 3(f)(vi) of the Act. The respondent no.4 passed a resolution on 24.10.2000 for acquisition of the subject land admeasuring 13 Hectares and 43 Ares and the same was submitted to the Collector, Latur who in turn, has taken further steps under the Act. The Karkhana requires the subject land for its purpose and in normal course, the acquisition is sought to be made by following due process of law. It has stoutly denied the allegations of malafides and colourable exercise of power. The proposals for construction of Farmers Home, Sugar School and Cane Yard are going to benefit the cultivators, members of respondent no.4 as well as the harvesting labour and, therefore, the land sought to be acquired is for public purpose. It is also stated that the acquisition proceedings in respect of land from Gat Nos.655, 650, 22 and 25 admeasuring about 5 Hectares is in progress and the same is also at the instance of the Karkhana. Once, the Co-operative society has passed a resolution which has been acted upon by the competent authorities, the requirements of clause (vi) of section 3(f) of the Act are satisfied and, therefore, the challenge raised to the subject acquisition is without any substance and the same is required to be rejected by this Court. In support of the defence, the learned Counsel for the respondent no.4 has relied upon the following decisions of the Supreme Court:

1) [Land Acquisition Collector and Another Vs. Durga Pada Mukherjee and Others, .](#)

2) [Bajirao T. Kote \(Dead\) by Lrs. and Another Vs. State of Maharashtra and Others, .](#)

In addition, reliance has been placed on the following two judgments of this Court:

1) [Mr. Chiman Narayan Taras and Others Vs. State of Maharashtra and Others, .](#)

2) Murlidhar Madhusudan Roplekar v. The State of Maharashtra and ors. 2000(3) ALL MR 358 .

10. We are required to decide whether the subject acquisition falls within the provisions of section 3(f)(vi) of the Act i.e. public purpose or whether the acquisition is for a company within the meaning of section 3(e) of the Act thereby requiring the compliance of Part VII. The learned Government Pleader produced before us, the original record and, therefore, some of the relevant facts are noted, as under:-

The respondent no.4 has acquired, by private negotiations, about 200 acres of agricultural land and it came to be registered under the Maharashtra Cooperative Societies Act, 1960 on 21st March, 2000. It has crushing capacity of 1250 M.T. Its resolution dated 24.10.2000 was received by the Collector and consequently, an

agreement came to be signed between the Collector and the respondent no.4 on the same day. This agreement is for the purpose of complying the requirements of Part VII of the Act as is clear from its terms. One of the conditions was for the Karkhana to deposit an amount of Rs.16,78000/- within one week and also to comply with other requirements of Part VII of the Act. The purpose for acquisition as was stated in the resolution passed by the Karkhana was residential arrangement for the harvesting labour, parking lot for transportation vehicles, sugar school and fuel station. However, in the agreement signed between the parties on the same day, the purpose mentioned was administrative building, farmers home, sugar school and cane yard.

On 20.12.2000, the Collector, Latur passed an order u/s 3 read with section 51 of the Act and directed the Sub Divisional Officer to act as Land Acquisition Officer and take appropriate steps for acquisition of the land. On the very next day, the Collector passed another order directing the Sub Divisional Officer to issue notification u/s 4 of the Act and inform the Tahsildar, accordingly. In addition, the Assistant Registrar, Latur was informed against registering any agreement of sale or transfer of the subject land. On 26.12.2000, the Land Acquisition Officer forwarded notification u/s 4(1) of the Act for publication in the Government gazette and it came to be published on 18.1.2001. The purpose for acquisition mentioned in the said notification was "educational and cultural schemes." Notifications u/s 4(1) of the Act were subsequently, served on the petitioners. They submitted their replies through an Advocate and opposed the acquisition. On the purpose of Sugar School, it was very specifically stated by the petitioners that the villages Nivali and Borgaon were located at a distance of about 2 Kms from the respondent no.4 factory and in both the villages, there are secondary schools. In such circumstances, there was no necessity for the proposed Sugar School. The Sub Divisional Officer conducted an enquiry u/s 5A of the Act after hearing both the parties. The respondent no.4 was also represented by an Advocate in the said enquiry. In the mean while, the Collector went on reminding the Land Acquisition Officer to expedite the process. Finally, the objections raised by the petitioners were rejected by the Sub Divisional Officer. However, vide letter dated 27.6.2001, the Sub Divisional Officer approached the Government Printing Press, Aurangabad for amendment to the original notification published u/s 4(1) of the Act. The same amendment was published in the Government Gazette on 27th September, 2001 and the purpose for acquisition was changed to Farmers Home, Sugar School and Cane Yard in place of Educational and Cultural Schemes. Fresh enquiry u/s 5A of the Act was conducted. The petitioners again appeared in the said enquiry through an Advocate. The respondent no.4 also was represented by an Advocate and the objections raised by the petitioners came to be rejected by the Land Acquisition Officer vide his order dated 24.10.2001. The petitioners have brought on record the amended notifications and it is required to be noted at this stage that a fresh notification u/s 4(1) of the Act was not issued and it was only a corrigendum regarding the change

of purpose for acquisition. The declaration u/s 6 of the Act was published in the Government Gazette on 20.12.2001 i.e. during the pendency of this petition.

11. On 12.9.2001, this Court had issued notice before admission. Civil Application No.155 of 2001 was allowed in terms of prayer clause (B) vide order dated 23.1.2002. In the case of Smt. Somawanti and others (supra), which has been relied upon by the respondents no.1 to 3, the Supreme Court in its majority view *inter alia*, held, as under:

"The object of the law is to empower Government to acquire land only for a public purpose or for a company, and, where it is for a company the acquisition is subject to the provisions of Part VII. The acquisition for a company contemplated by Part VII is confined only to cases where the Government is satisfied that the purpose of obtaining the land is erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith or for the construction of some work which is likely to prove directly useful to the public."

This view has been consistently followed and the learned Counsel for the State Government is right in his contentions that the issue of "public purpose" is a subjective satisfaction of the State Government. Once, the Government has arrived at a conclusion that the land was sought to be acquired for public purpose, that decision is not a matter of judicial review *per se*. We are not testing the Government's wisdom in terming the subject acquisition for public purpose. We are examining whether the subject acquisition proceedings could be held to be for public purpose on the basis of the purpose mentioned in the notification originally issued or subsequently amended. This Court is not estopped from testing the acquisition proceedings *qua* the provisions of the Act. The petitioners are specific in their contentions that the purpose of acquisition is not a public purpose and the purpose of acquisition was subsequently, changed during the pendency of this petition, having realised that the original purpose did not fall within the meaning of public purpose. Most of the decisions relied upon by the learned Counsel for the Government, relate to the Government forming opinion about public purpose and, therefore, they are not relevant for deciding the issues which we have framed above.

13. Section 3(e) of the Act defines the term "company" and section 3(f) defines the term "public purpose". The same definitions are reproduced, as under: "(e) the expression "Company" means -

- (i) a company as defined in section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc);
- (ii) a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc);

(iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in clause (cc)."

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

(i) the provision of village-sites or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provisions of any premises or building for locating a public office, but does not include acquisition of land for Companies."

Both these definitions have been amended by Act 68 of 1984. Section 4(1) of the Act states that whenever it appears to the appropriate Government, the Commissioner, or Land Acquisition Officer 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 at least 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. The acquisition thus, stated u/s 4(1) of the Act is of two types namely, for public purpose and for a company. The acquisitions for companies are covered

in Part VII i.e. from Section 38A to 44B of the Act.

14. Section 38A of the Act states that an industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provisions of amenities directly connected therewith shall, in so far as it concerns the acquisition of such land, be deemed to be a Company for the purpose of said Part, and references to Company in sections 4, 5A, 6, 7 and 50 shall be interpreted as references also to such concern.

Section 39 of the Act states that the provisions of section 6 to 16 (both inclusive) and section 18 to 37, (both inclusive) shall not be put in force in order to acquire land for any Company under the said Part unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned i.e. u/s 41.

Section 40 of the Act contemplates previous enquiry by the appropriate Government for processing the proposal of acquisition for a company. Section 41 states that if the appropriate Government is satisfied after considering the report, if any, of the Collector u/s 5A, sub-section (2), or on the report of the officer making an inquiry u/s 40 that the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of section 40, it shall require the Company to enter into an agreement with the appropriate Government providing, to the satisfaction of the appropriate Government, for the matters stated therein i.e. payment to the appropriate Government of the cost of the acquisition, etc.

Section 42 of the Act states that every such agreement shall, as soon as may be after its execution, be published in the Official Gazette and shall thereupon so far as regards the terms on which the public shall be entitled to use the work have the same effect as if it had formed part of the said Act.

Section 44A puts restriction on the Company from transferring the acquired land whereas section 44B states that notwithstanding anything contained in the Act, no land shall be acquired under Part VII, except for the purpose mentioned in clause (a) of sub-section (1) of section 40, for a private company which is not a Government company.

15. If the impugned acquisition is for public purpose and at the instance of respondent no.4, it must satisfy the requirements of clause (vi) of Section 3(f) of the Act, namely, the respondent no.4 ought to have framed a scheme which is already sanctioned by the State Government for educational, housing, health, or slum clearance. When we pointedly inquired about this condition, it was stated on behalf of the respondent no.4 that its resolution dated 24.10.2000 was forwarded to the Collector which has been duly acted upon and that itself meets the requirements of public purpose. In addition, our attention was invited to the Government Resolution

dated 30th October, 1996 in support of this contention as well. This resolution states that the Zilla Parishads shall take appropriate steps to provide schooling facilities to the children of harvesting labour working in or for the sugar factories, titled as "Sugar Schools". Whether these steps taken by the respondent no.4 really meet the requirements of public purpose is required to be examined on the touchstone of the law laid down by the Supreme Court from time to time and we will refer to the following two judgments.

In the case of [Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others](#), similar issue was considered by the Apex Court. The land was sought to be acquired for a cooperative society registered under the Andhra Pradesh Cooperative Societies Act and the same acquisition was objected to on the ground that it was not for public purpose. While dealing with the respective contentions, a two Judge Bench of the Apex Court observed:

(a) "Public purpose is not capable of precise definition. Each case has to be considered in the light of the purpose for which acquisition is sought for. It is to serve the general interest of the community as opposed to the particular interest of the individual. Public purpose broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally the executive would be the best judge to determine whether or not the impugned purpose is a public purpose. Yet it is not beyond the purview of judicial scrutiny. The interest of a section of the society may be public purpose when it is benefited by the acquisition. The acquisition in question must indicate that it was towards the welfare of the people and not to benefit a private individual or group of individuals joined collectively. Therefore, acquisition for anything which is not for a public purpose cannot be done compulsorily.

(b) There is no provision in the Act to say that when a land is required for a company, it may also be for a public purpose. Therefore, if a company, namely a Cooperative Society registered under the Central or State Cooperative Societies Act, preceding 1984 Amendment Act, had to acquire the land it had to do so in strict compliance with Chapter VII. If the company, (Cooperative Society) requires land for any purpose other than those mentioned in Section 40, then no compulsory acquisition under the Act is possible.

(c) Even the acquisition for a company, unless utilisation of the land so acquired is integrally connected with public use, resort to the compulsory acquisition under Chapter VII cannot be had. Even when Chapter VII was invoked, the requirements of Section 40 and Section 41 are mandatory and shall be strictly complied with.

(d) Notwithstanding anything contained in the Act, i.e., despite the compliance with Chapter VII, no land should be acquired under Chapter VII except for the purpose mentioned in clause (a) of subsection (1) of Section 40, for a private company which

is not a Government company and that such company shall not be entitled after the acquisition under Chapter VII to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government."

The Supreme Court noted that the cooperative society for which the land was sought to be acquired had not submitted any scheme to the State Government and such a scheme was never approved by the State Government prior to issuance of the notification u/s 4(1) of the Act. The Court held that to meet the requirements of public purpose, within the meaning of section 3(f)(vi) of the Act, such a prior approval/sanction by the State Government on the proposed scheme as submitted by the cooperative society was a must and failure in that regard would lead to the conclusion that the purpose of acquisition was not a public purpose.

We then refer to a three Judge Bench judgment of the Apex Court in the case of H.M.T. House Building Co-operative Society Vs. Syed Khader and others, which has elaborately dealt with the same issue and this decision is squarely applicable to the case at hand. When the earlier two notifications issued u/s 4(1) were not acted upon by the State Government, the third notification was issued and the acquisition proceedings were set in motion. The proceedings were challenged before the Karnataka High Court. The High Court allowed the petition. The appeals before the Supreme Court came to be dismissed and it would be apt to reproduce the following observations in the said case in paragraphs 20, 21 and 23.

"20. Now the question which is to be answered is as to whether in view of the "20. Now the question which is to be answered is as to whether in view of the definition of "public purpose" introduced by the aforesaid amending Act 68 of 1984 in Section 3(f)(vi), is it open to the appropriate Government to acquire land for cooperative society for housing scheme without making proper enquiry about the members of the Society and without putting such housing co-operative society to term in respect of nature of construction, the area to be allotted to the members and restrictions on transfer thereof?

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

held that the prior approval, required by Section 3(f)(vi), of the appropriate Government is not just a formality; it is a condition precedent to the exercise of the power of acquisition by the appropriate Government for a housing scheme of a co-operative society.

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

The Apex Court finally concluded that the provisions of section 3(f)(vi) of the Act were not complied with inasmuch as, there was no prior approval of the State Government as required by the said section before the steps for acquisition of the lands were taken. The appellant society had not submitted any plans which were required to be approved by the State Government regarding the proposed housing scheme.

16. In the case at hand, admittedly, there is no such scheme either for the farmers home, sugar school or cane yard submitted to the State Government and which has been subsequently, approved by the State Government before the notification u/s 4(1) was issued. On the other hand, the agreement executed on 24.10.2000 specifically deals with the proceedings under Part VII of the Act and we fail to see any reasons as to why this agreement was not taken note of by the Collector, Latur while issuing the notification u/s 4(1) of the Act. If this agreement was acted upon in its true spirit, the acquisition could have proceeded for the company and under Part VII of the Act. This has not been done. The agreement was obviously given a go by and the challenge raised by the petitioners is being fought on the ground that the acquisition was for public purpose. We have no hesitation to hold that the purpose for acquisition does not fall within the ambit of public purpose as defined u/s 3(f)(vi)

of the Act and the acquisition is for a company as defined u/s 3(e) of the Act whereby it is imperative that the procedure as set out under Part VII of the Act is followed and the acquisition proceedings are undertaken. The decisions cited on behalf of the respondents State authorities as well as respondent no.4 are not applicable in the facts of this case.

17. The learned Counsel for the respondent no.4 relied upon the provisions of section 15A of the Act and raised preliminary objection to the maintainability of this petition. He contended that the petitioners have an alternative remedy under the Act itself and, therefore, the petition need not be entertained. This submission do not commend to us and we reject the preliminary objection. The learned Counsel further submitted that one of the petitioners has made plotting of some portion of his land under acquisition and sold plots by registered sale deed. The copies of some of those sale deeds have been brought on record. The respondent no.4, therefore, alleges that the challenge to the land acquisition proceedings is not bonafide and in any case, the petitioners are determined to sell the subject land for commercial purpose or for residential purpose by making plots. We have perused the copies of the sale deeds brought on record and we have noted that they were registered prior to issuance of the notification u/s 4(1) of the Act. The petitioners have submitted before us a written undertaking that they shall not alienate the land to any third party by any mode and the land shall be used by themselves for their livelihood.

18. We make it clear that we have not dealt with any other issues raised by the petitioners and the allegations made by the petitioners against respondents are not germane for examining whether the subject acquisition is for public purpose. The Government Resolution dated 30th October, 1996 does not support the contentions of the respondent no.4 that its proposal to provide for a Sugar School is as per the State policy and, therefore, the acquisition is for public purpose. It was necessary for the respondent no.4 to have submitted the schemes for the proposed housing as well as school after signing the agreement dated 24.10.2000. The Collector ought to have made an inquiry regarding the proposed schemes, processed the proposal for approval to the State Government and the acquisition proceedings ought to have been initiated after the proposals were approved by the appropriate authorities so as to make the purpose for acquisition as public purpose within the meaning of section 3(f)(vi) of the Act. This has not been done and, therefore, the impugned notifications issued u/s 4 of the Act are unsustainable as they clearly state that the subject land was sought to be acquired for a public purpose. The law laid down by the Apex Court in the case of Srinivasa Cooperative House Building Society Ltd. (supra) and H.M.T. House Building Co-op. Society (supra) is squarely applicable to the facts of this case.

19. In the result, we allow the petition and quash and set aside the notification published in the gazette on 18th January, 2001 and the amended notification

published in the gazette on 20th September, 2001 as well as the declaration u/s 6 of the Act published in the gazette on 20.12.2001. Rule is made absolute accordingly, with no order as to costs. 20Before parting with the case, we make it clear that the authority of the respondents to proceed under Part VII of the Act for the subject acquisition shall not, in any way, be affected by this decision.