A URMILA ROY & ORS.
V.
M/S.BENGAL PEERLESS HOUSING DEVELOPMENT COMPANY LTD. & ORS.
Civil Appeal No. 1780-1781of 2009

B MARCH 23, 2009

[TARUN CHATTERJEE AND HARJIT SINGH BEDI, JJ.]

Land Acquisition Act, 1894 – ss. 4 and 6 – West Bengal Housing Board Act, 1972 – s. 27A – Notification for acquisition C *of land for public purpose – Case of land owners that land acquired for Housing Scheme by private party – Challenge to – Held: Test of acquisition for public purpose was satisfied – Government retained overall control over the housing scheme – Substantial part of compensation was paid by State* D *Government or Housing Board –Scheme was prepared in terms of 1972 Act and it provided for benefits of poor sections of society – Also, land owners waived their right to challenge acquisition – They acquiesced to the acquisition – Hence, order of Division Bench of High Court that land was acquired* E *for public purpose does not call for interference.*

It is the case of the appellant that they purchased land for a project and had been negotiating with the State Housing Board. However, before the finalisation of the project, the State Government issued a Notification for F **acquisition of the said land for a public purpose. The said land was acquired for a Housing Scheme by a Housing Development Company-private party. An award was passed and the land owners were awarded compensation. Appellants challenged the acquisition** G **proceedings. The Single Judge of High Court allowed the writ petition. However, the Division Bench of High Court set aside the order of the Single Judge. Hence the present appeals.**

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The question which arose for consideration in these appeals was whether Part II or Part VII of the Land Acquisition Act is applicable to the acquisition proceedings; that whether the Housing Scheme satisfied the requirement of section 27A of the West Bengal Housing Board Act, 1972; and whether the acquisition and the Scheme were a colourable exercise of power so as to give undue benefit to the private party-BP.

Dismissing the appeals, the Court

HELD: 1.1 BP was not a Government Company, within the meaning of s. 3(cc) of the Land Acquisition Act, 1894 inasmuch as the Government did not hold 51% of the paid-up share of the capital. However, s. 3(cc) is to be read along with s. 6 explanation 2 appended therewith. A perusal of the Second proviso and explanation 2 to s. 6 of the Act in particular reveals that if the compensation awarded for the property is paid substantially out of the funds of a Corporation owned or controlled by the State, such compensation will be deemed to be paid out of public funds and as such would satisfy the test of acquisition for a public purpose. [Para 11,12] [848-C; 850-F]

1.2 As per letter issued by the Land Acquisition Collector on 13th November 2001 to the Housing Ministry of the State Government, a request had been made that a sum of Rs.3.00 Crores which represented about 50% of the compensation of the acquired land be deposited. This memo had been forwarded by the State Government to the Housing Board and on 23rd November 2001 a sum of Rs.1.70 crores towards compensation had been sent by BP to the Land Acquisition Collector through the Housing Board. It appears that on 30th October 2003 the State Government had requested the Housing Board to make arrangements for the balance payment of compensation of about Rs.82,04,138 and by a memorandum of 31st October 2003 the Government of West Bengal had

A directed the Housing Board to pay the additional balance compensation which too was defrayed by an account payee cheque dated 03rd November 2003 drawn on the Bank of Maharashtra. The account statement of the Bank of Maharashtra was produced for perusal and this B statement supports the argument that the said amount had, indeed, been paid from the funds of the Housing Board which is completely owned and controlled by the State Government. In their written submissions the appellants doubted the accuracy of this statement, by C asserting that they had not been able to verify its contents as it had been produced for the first time in this Court. Even if this objection is accepted and the statement ruled out of consideration, the other evidence on record does indicate that a substantial part of the compensation paid D by the State Government or by the Housing Board which clearly satisfies the test of public purpose. The finding of the Division Bench that the procedure envisaged in Part II and not in Part VII of the Act would be applicable is endorsed. This is precisely what has been done. [Paras 13 and 14] [850-G-H; 851-A-D; 853-E-F]

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1.3 There is merit in the submission that the said Act specifically provided for the transfer of the acquired land to a Joint Sector Company for the purpose of the execution of the Housing Scheme with the previous F approval of the State Government and that the scheme had indeed been framed under sections 17 and 18 and thereafter entrusted for execution to the BP; and that though BP had been entrusted with the execution of the scheme the overall control remained with the Housing G Board which was, in fact, an extension of the State Government itself and the State Government a fortiori retained overall control in the execution of the scheme. [Para 16] [854-A-C]

1.4 The record indicates that as a consequence of a H Memorandum of Understanding, a Joint Sector Company

for the execution of the housing scheme had been created and it was provided that 49.5% of the shares capital would be held by each of the two i.e. the Housing Board and BP and the balance 1% would be held by the public and the company would be run independently by nine Directors, of whom five including the Chairman were to be nominated by the State Government. It is also relevant that the scheme had, in fact, been prepared by the State Government after due deliberation and had been initiated as per the provisions of the West Bengal Housing Board Act, 1972 by virtue of a meeting held on 17th May 2000 in the Office of the Secretary, Housing Department, the Commissioner of the Housing Board, the Land Acquisition Collector and several other senior officials and the proposal had been mooted for the acquisition of the land for the purpose of a scheme for weaker sections of society and others with modest incomes. The scheme also provided for the construction of 1800 dwelling units of various categories with at least 50% to be earmarked for the lower and middle income groups with the price subsidized for the former and all flats for the middle income group to be provided on 'no profit no loss' basis, and for facilities for schools, roads etc. for the benefit of those who were ultimately to reside in the dwelling units. Significantly also, the scheme provided that there would be no escalation on account of any reason whatsoever for the price charged for the dwelling units and that the allotment of the dwelling units would be on the basis of a lottery. [Para 16] [854-C-H; 855-A]

1.5 Section 27-A specifically authorizes the Housing Board in public interest to entrust a housing scheme to a Joint Sector Company with the previous approval of the State Government. There is no warrant for the proposition that unless a budgetary provision is made by the Housing Board or that a final scheme is prepared in accordance with section 23 of the 1972 Act, no land can be acquired

A for the purpose of execution of a housing scheme. Section 17 of the 1972 Act itself gives the power to the Housing Board to make a scheme and that section 27A further authorizes the Board in public interest to entrust a housing scheme to a Joint Sector Company for execution B and for that purpose section 28(2) of the Act further authorizes the Housing Board to take steps for compulsory acquisition of any land required for the purpose of a housing scheme. [Para 18] [857-F-H; 858-A-B]

1.6 Though the execution of the housing scheme has C been entrusted to a Joint Sector Company, the overall control over the project has been retained by the Government controlled Board of Directors, full details of the scheme have been provided with large provisions for the benefit of the poorer sections of society, with the D allotment of tenements either on a subsidized price or on "no profit no loss" basis for the low and middle income groups respectively, allotment by draw of lots to avoid any arbitrariness and a complete freeze on the price of residential accommodation with no escalation whatsoever E for whatever reason and the provision of facilities for effective and comfortable living such as schools, roads, sewage etc. Therefore, the housing scheme fully satisfies the tests of public purposes. [Para 20] [862-G-H; 863-A-B]

West Bengal Housing Board and Ors. vs. Brijendra F *Prasad Gupta and Ors. 1997 (6) SCC 207; State of Tamil Nadu vs. L. Krishnan* (1996) 1 SCC 250 – relied on.

1.7 The appellants had not filed any objection to the acquisition on the plea that some assurance had been G held out that they too would be allowed to participate in the housing scheme. This fact has been denied by the respondents and it has been emphasized that as per letter dated 8th March 2001 the land-owners had, in fact, waived their right to challenge the acquisition. [Para 21] [863-C-D]

H 1.8 It is significant that the letter written on behalf of

all the land owners spells out that the owners had in fact been willing to negotiate the price for the land at the time when the acquisition were still incomplete as only the Notification under section 4 of the Act had, at that stage, been issued (4th December 2000). It is also significant that the declaration under section 6 had been issued on 29th November 2001 and the award rendered on 27th December 2003. Therefore, it is evident that the land owners had, in fact, acquiesced to the acquisition and cannot now turn around to say that the acquisition was bad in law.[Para 22] [865-E-F]

State of Gujarat and Anr vs. Sankalchand Khodidas Patel (D) 1977 (4) SCC 590; Pratibha Nema and Ors. Vs. State of M.P. and Ors. (2003) 10 SCC 626; Manubhai Jehtalal Patel vs. State of Gujarat (1983) 4 SCC 553 – referred to.

Case Law Reference

1977 (4) SCC 590	**Referred to.**	**Para 5**
(2003) 10 SCC 626	**Referred to.**	**Para 5**
(1983) 4 SCC 553	**Referred to.**	**Para 5**
(1996) 1 SCC 250	**Relied on.**	**Para 18**
1997 (6) SCC 207	**Relied on.**	**Para 19**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos...1780-1781 of 2009

From the Judgement and Order dated 02.07.2007 of the Hon'ble High Court of Calcutta in FMA No. 671 of 2004 and FMA 672 of 2004.

Debashish Kunda, Soumitra Ghose Chaudhuri, Subhash Bhattacharyya, Subhasis Chakraborty, G. Ramakrishna Prasad, for the Appellants.

Altaf Ahmed, Prasanjit Basu, A.N. Banerjee, H.K. Puri, Priya Puri, V.M. Chauhan, for the Respondents.

A The Judgement of the Court was delivered by

HARJIT SINGH BEDI, J.

1. Leave granted.

2. This judgment will dispose of civil appeals arising out of
B judgment dated 2nd July, 2007 rendered by a Division Bench of the Calcutta High Court.

3. The facts are as under: Appellant Urmila Roy and others in W.P No.1002 (W) of 2002 were the writ petitioners before
C the Single Bench of the Calcutta High Court. As per the facts, 6.78 acres of land had been purchased by them avowedly for putting up an International School, a cultural centre, an I.T. Park and a Housing Complex and for this purpose they had been in negotiations with the West Bengal Housing Board (hereinafter
D referred to as "The Housing Board"). It appears, however, that before the project could be finalized, the State Government issued a Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") on 4th December, 2000 seeking to acquire in all 12.67 acres (including 6.78 acres
E belonging to the writ petitioners) for a housing scheme. The land owner appellants were allegedly given to understand by the Housing Board that in the event that they did not object to the acquisition, they too would be permitted to participate in the proposed project. It is the case of the land owners that on account of this assurance, they did not raise any serious
F objection to the acquisition, where after a declaration under Section 6 (1) of the Act dated 29th November, 2001 has issued and published in the Asian Age on 4th December, 2001. It is further the case of the land owners that they realized later that they had been cheated as the land had been acquired for the
G development and implementation of a housing scheme by the Housing Development Co. Ltd. (hereinafter referred to as "The Bengal Peerless"). The Collector subsequently i.e. on 22nd December, 2003 passed an Award determining the compensation payable and it is the case of the land owners
H that they first came to know of the award on receipt of a notice

dated 16th February, 2004 whereby they were informed that as the ownership of the acquired land could not be ascertained, the compensation had been deposited with the Reference Court under Section 31(2) of the Act. The land owners thereupon filed Writ Petition No. 10051(W) of 2004 challenging the acquisition proceedings pleading inter-alia that the said proceedings had lapsed by efflux of time under Section 11-A of the Act as the declaration under Section 6 of the Act had been as published on 29th November, 2001 and the Award had been made on 22nd December, 2003. It was also pleaded that the declaration under Section 6(2) of the Act had not been published in the manner provided. It was further pleaded that the land had been acquired under the garb of a public purpose whereas it was intended to benefit the Bengal Peerless, a private party and an attempt had been made to camouflage the identity of the beneficiary as it had not been specified in the Notifications issued under Sections 4 and 6 of the Act and had been brought out for the first time in the Notification under Section 9 and in this view of the matter, the land owners had been deprived of their rights to file appropriate objections. Cumulatively, it was submitted that in view of the facts, the acquisition itself was a colourable exercise of power at the instance of the State.

4. These matters were considered by a learned Single Judge of the Culcutta High Court, who, by his Judgment dated 16th September, 2003 concluded that the Notifications under Sections 4 and 6 had been properly published as required by law, that the land had been acquired for a public purpose, as detailed in the Notification under Section 4 of the Act and that the State Government was authorized to entrust the housing project to a Joint Sector Company to execute the housing scheme with the sanction of the State Government under Section 27A of the West Bengal Housing Board Act, 1972 (hereinafter referred to as "the 1972 Act"). The Learned Judge, however, observed that the proposal for the housing scheme had been initiated by the Bengal Peerless without the approval of the State Government and the fact that the entrustment to the Bengal

A Peerless was in public interest had not been examined by the State Government, and as the scheme itself did not disclose the budget or detail adequately the residential accommodation that was to be constructed for the low and middle income groups, the scheme itself was faulty and finally concluded that it appeared B from the record that the intention of the Government was to enable Bengal Peerless to make huge profits and as such the acquisition was not for a public purpose and was, therefore, malafide. The learned Single Judge accordingly allowed the writ petition vide judgment dated 18th May, 2004.

C 5. The matter was thereafter taken before a Division Bench in FMA No. 671 of 2004 (Bengal Peerless Housing Development Co.Ltd. vs.Urmila Roy & Ors.), FMA 672 of 2004 (State of West Begal & Ors. Vs.Urmila Roy & three Ors.) and FMA 790 of 2006 (Smt. Krishna Majumdar & Ors. Vs. State of D West Bengal & Ors.) and was argued at length over several days. The Division Bench by its judgment dated 2nd July 2007, accepted the argument of the Advocate General appearing for the State appellant based on several judgments of this Court that a challenge to an acquisition should not be permitted after E the award had been rendered, and that in any case, the challenge even if permissible, had been made belatedly. The Division Bench then went on to the facts of the case and observed that the conclusion of the learned Single Judge that the whole process of acquisition was malafide, was based on a F misconception, more particularly as several documents which were relevant had been ignored, that in the face of these documents, the finding of the learned Single Judge that the housing scheme had not been prepared with the approval of the State Government was erroneous, and that the evidence G revealed that a substantial part of the compensation for the acquired land had been paid by the Government or its agencies. The Division Bench further observed that from a perusal of the record that the acquisition proceedings themselves were transparent in nature and merely because the name of Bengal Peerless as the ultimate beneficiary had come up for the first H

time in the Notification under Section 9 of the Act could not lead to the conclusion that the acquisition proceedings were a colourable exercise of power. The Court then examined the purpose behind the enactment of the 1972 Act and opined that the Housing Board had been established under governmental control with a view to alleviating the shortage of housing and in particular referred to Sections 17 to 21 to highlight that all its members were appointed by the State Government and the Chairman was, in fact, the Minister of In-charge of the Housing in the State Government. The Division Bench also held that Section 27A which had been inserted in the parent act by an amendment of 1993 was for the specific purpose of authorizing the Housing Board to entrust the execution of a housing scheme to a joint sector company if it was felt that it was unable to perform its duties on account of financial limitations. The Division Bench then observed that a Memorandum of Understanding had been signed on 2nd May 1994 providing that the Housing Board and the Bengal Peerless would have an equal share capital of 49.5% each and the balance 1% would be held by the public and that the company would be run by a nine member independent Board of Directors of whom five, including the Chairman, were to be nominated by the State Government with the result that the State Government was, in effect, in complete control of the management of Bengal Peerless. It was finally concluded that in view of this feature and the fact that as per record a substantial part of the compensation had been paid out of public funds by the Housing Board, a State Government undertaking, it was not open to the land owners to argue that the land had been acquired to benefit a purely private company. The Division Bench also relied upon the judgment in *State of Gujarat & Anr vs. Sankalchand Khodidas Patel (D) (1977) 4 SCC 590 and Pratibha Nema & Ors. Vs. State of M.P. & Ors. (2003) 10 SCC 626* to draw a distinction between acquisition for a public purpose and acquisition for a company and observed that as some part of the compensation had been paid by the Housing Board, the fact that the procedure for acquisition for a public purpose had been adopted was justified on the facts of the case

A and relying further on *Manubhai Jehtalal Patel vs. State of Gujarat (1983) 4 SCC 553* further held that even a contribution of Re.1/- from the State Revenues could, in certain circumstances, be held adequate to hold that the acquisition was for a public purpose. The Division Bench finally observed
B thus:

> "From the above it becomes crystal clear that the contribution to be made by the State need not be substantial and even a token contribution of Rs.100 would satisfy the requirement that the compensation has been paid out of
C public funds."

6. The Division Bench thereafter examined the issue as to whether the housing scheme had been prepared in accordance with the provisions of the 1972 Act and once again differed from
D the findings of the learned Single Judge that the provisions had been ignored, as a perusal of the record revealed that the scheme had been framed by the State Government pursuant to a meeting held on 17th May 2000 in the Office of the Secretary Housing in the presence of the Commissioner and the Land
E Acquisition Officer of the Housing Board and the agenda circulated for the meeting established that it had been called to discuss the suitability of the scheme which had been designed to benefit the weaker sections of society and others with modest means, as it envisaged the construction of about 1800 dwelling units of three categories, namely the low, the middle and the
F higher income groups and that at least 50% of the aforesaid units were to be reserved for the first two groups with the price for the former category being substantially subsidized and the flats for the middle income group to be provided on "no profit no loss basis" and, significantly, it was specified that the price once
G determined by the Housing Board before the start of the project would remain firm and that no escalation on any account was to be made for any of the dwelling units of any category. The aforesaid information led the Division Bench to conclude that the non-escalation Clause in particular, indicated that the scheme
H was not motivated by profiteering alone but was in fact for the

benefit of poorer sections, and that if any further evidence was required to prove the bonafides of Bengal Peerless, the scheme also provided that distribution of plots was subject to the reservation of plots as per the policy of the Housing Board and allotments were to be made by a lottery system and that scheme was to be completed within 5 years from the date of the commencement of the work. Finally, the Division Bench observed as under:

> "In our opinion, these observations of the Supreme Court are fully applicable to the facts and circumstances of the present case. The facts narrated above make it abundantly clear that Housing Scheme has been prepared by the Government, after due consideration and it could not be said to have been initiated at the instance of the Bengal Peerless. Therefore, the learned Single Judge has erroneously held that the acquisition proceedings were null and void."

7. The Division Bench also repelled the argument raised on behalf of the land owners that as they too were in the process of setting up a global village in the land the acquisition was untenable by observing that the letter dated 8th May 2001 written by Urmila Roy respondent on which primary reliance had been made by the land owners with respect to the aforesaid plea was not acceptable at this belated stage as the land owners had not raised any objection to the acquisition of the land by the State Government, and further that no such plea had not been raised in the writ petition. The Court then observed that Writ Petition No.10002 (W) of 2002 filed by some other land owners seeking to challenge the same acquisition had been dismissed by Justice Chattopadhyay on 16th September 2003 and the issues raised in the present appeal had also been raised before the said Judge and had been repelled and it had been specifically observed that the land had, indeed, been acquired for a public purpose and not for a private company, as alleged. The Division Bench, accordingly, allowed the appeal leading to the present matters before this Court.

A 8. The learned counsel for the appellants has raised several issues before us. It has been submitted that the Bengal Peerless was not a Corporation within the meaning of Section 3 (cc) of the Act, inasmuch as 51% of the share capital in the said company was not held by the State Government or any B Central Government or State Government Undertaking as only 49.5% of the shareholding was held by the Housing Board. It has been submitted that Bengal Peerless was also not a company within the meaning of section 617 of the Companies Act, 1956 and was therefore a company within the meaning of C Section 3(e) of the Land Acquisition Act, and as such Part VII of the Act was applicable and not Part II thereof. It has also been submitted that the housing scheme Annexure P3 was not a housing scheme. as envisaged under the 1972 Act but was merely a proposal that too an incomplete one. Reliance for this submission has been placed on Sections 17,18,19,23 27 and D 27(A) of the 1972 Act. As a corollary, it has been argued that the finding that Bengal Peerless had been entrusted with the execution of the housing scheme was incorrect, as no terms and conditions of such entrustment had been agreed upon as was a pre-requisite for the execution of a housing project by a E Joint Sector Company under section 27-A of the 1972 Act. It has also been urged that the entire amount of the acquisition money deposited prior to the publication of the declaration under Section 6 of the Land Acquisition Act had been paid by Bengal Peerless and no part thereof had been paid by the Government F of West Bengal or the Housing Board, and further the finding of the Single Bench as also of the Division Bench of the High Court to the effect that the acquisition proceedings had been set in motion after the scheme had been duly prepared was incorrect. It has accordingly been argued that the observation of the G Division Bench in the *State of Tamil Nadu vs.L.Krishnan (1996) 1 SCC 250* were not applicable to the facts of the case and that in any event the Tamil Nadu Act which was under consideration in that matter did not contain a provision analogous to Section 27A of the 1972 Act and as a necessary consequence, even

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assuming for a moment that a housing scheme was in fact in existence when the Notification under Section 4 of the Land Acquisition Act has been issued, the said scheme had not been formalized in terms of Section 27-A of the 1972 Act. It has been submitted that from the facts writ large that the purpose of the acquisition and the entrustment to the Bengal Peerless of the development of the project was with the intention of giving huge financial benefits to the Bengal Peerless which was not a public purpose and was in any case unacceptable in terms of the purpose of a housing scheme envisaged under the 1972 Act.

9. The arguments of the learned counsel for the appellants have been controverted by the respondent State of West Bengal. It has been pointed out that the housing scheme had been designed in terms of the 1972 Act and all the relevant provisions had been complied with and that in any case by virtue of sub-section (2) of Section 17 thereof it was open to the State Government to entrust the framing and execution of a Housing scheme to the Housing Board on such terms and conditions as it think fit, and that the scope of a similar provision, Section 35 of the Tamil Nadu State Housing Board Act 1961 had been examined by this Court in **L.Krishnan's case (supra).** It has also been argued that acquisition of the land for the purpose of the execution of the housing scheme was a public purpose with little or no element of profiteering as the bare reading of the scheme would show, and that, in any case, the middle and lower income groups were to have subsidized housing on "no profit no loss" basis and to ensure that the conditions of the scheme were scrupulously observed the State Government had retained complete control over the activities of Bengal Peerless. It has also been submitted that as the appellants land owners had not filed objections under Section 5-A of the Land Acquisition Act, they were precluded from challenging the acquisition, more particularly after the award had been rendered.

10. We have heard the learned counsel for the parties and gone through the record very carefully. We find that three basic issues arise for consideration in this matter. They are, i) as to

A whether Part II or Part VII of the Act is applicable to the present acquisition proceedings, ii) whether the Housing Scheme was one that satisfied the requirement of Section 27A of the 1972 Act and, iii) whether the acquisition and the Scheme were a colourable exercise of power so as to give undue benefit to B Bengal Peerless. We now take up the three issues cumulatively.

11. It has been submitted at the very outset that Bengal Peerless was not a Government Company, as understood by Section 3(cc) of the Act as the Government did not hold 51% of the paid-up share of the capital. We find, however, that Section C 3(cc) is to be read along with Section 6 more particularly Explanation 2 appended therewith. The aforesaid provisions are reproduced hereunder:

> "3(cc).the expression "corporation owned or controlled by the State" means anybody corporation established by or D under a Central, Provincial or State Act, and includes a Government company as defined in Section 617 of the CompaniesAct,1956 (1 of 1956), a society registered under the Societies Registration Act,1860 (21 of 1860), or under any corresponding law for the time being in force E in a State, being a society established or administered by Government and a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, being a co-operative society in which not less than fifty-one per centum of the paid-up F share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments."
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> G **Section 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 under section 5 A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be H

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 under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5-A, sub-section (2):

[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 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 under Section 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

A compensation shall be deemed to be compensation paid out of 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 B 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 date of such publication and the giving of such public notice, being hereinafter referred to as the date of C 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 is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

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(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 a manner hereinafter appearing.

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12. A perusal of the Second proviso and Explanation 2 in particular reveals that if the compensation awarded for the property is paid substantially out of the funds of a Corporation owned or controlled by the State, such compensation will be F deemed to be paid out of public funds and as such would satisfy the test of acquisition for a public purpose.

13. We see from the record that as per letter issued by the Land Acquisition Collector on 13th November 2001 to the Housing Ministry of the State Government, a request had been G made that a sum of Rs.3.00 Crores which represented about 50% of the compensation of the acquired land be deposited. This memo had been forwarded by the State Government to the Housing Board and on 23rd November 2001 a sum of Rs.1.70 crores towards compensation had been sent by Bengal H Peerless to the Land Acquisition Collector through the Housing

Board. It appears that on 30th October 2003 the State Government had requested the Housing Board to make arrangements for the balance payment of compensation of about Rs.82,04,138 and by a memorandum of 31st October 2003 the Government of West Bengal had directed the Housing Board to pay the additional balance compensation which too was defrayed by an account payee cheque dated 03rd November 2003 drawn on the Bank of Maharashtra. The account statement of the Bank of Maharashtra was produced before us for perusal and this statement supports the argument that the aforesaid amount had, indeed, been paid from the funds of the Housing Board which is completely owned and controlled by the State Government. In their written submissions the appellants have doubted the accuracy of this statement, by asserting that they had not been able to verify its contents as it had been produced for the first time in this Court. We find that even if this objection is accepted and the statement ruled out of consideration, the other evidence on record does indicate that a substantial part of the compensation had been paid from Government funds. In *Pratibha Nema case (supra)*, that is what this Court had to say:

> We may now advert to Section 6. It provides for a declaration to be made by the Government or its duly authorized officer that a particular land is needed for a public purpose or for a company when the Government is satisfied after considering the report, if any, made under Section 5-A(2). It is explicitly made clear that such declaration shall be subject to the provisions of Part VII of the Act which bears the chapter heading "Acquisition of Land for Companies". Thus, Section 6 reiterates the apparent distinction between acquisition for a public purpose and acquisition for a company. There is an important and crucial proviso to Section 6 which has a bearing on the question whether the acquisition is for a public purpose or for a company. The second proviso lays down 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 2 then makes it clear that where the compensation to be awarded 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 of public revenues. Thus, a provision for payment of compensation, wholly or partly, out of public revenues or some fund controlled or managed by a local authority is *sine qua non* for making a declaration to the effect that a particular land is needed for a public purpose. Even if a public purpose is behind the acquisition for a company, it shall not be deemed to be an acquisition for a public purpose unless at least part of the compensation is payable out of public revenues which includes the fund of a local authority or the funds of a corporation owned or controlled by the State. However, it was laid down in *Somawanti case* that the notification under Section 6(1) need not explicitly set out the fact that the Government had decided to pay a part of the expenses of the acquisition or even to state that the Government is prepared to make a part of contribution to the cost of acquisition. It was further clarified that the absence of a provision in the budget in respect of the cost of acquisition, whole or part, cannot affect the validity of the declaration. The majority Judges of the Constitution Bench also clarified that a contribution to be made by the State need not be substantial and even the token contribution of Rs. 100 which was made in that case satisfied the requirements of the proviso to Section 6(1). The contribution of a small fraction of the total probable cost of the acquisition does not necessarily vitiate the declaration on the ground of colourable exercise of power, according to the ruling in the said case. Following *Somawanti*, the same approach was adopted in *Jage Ram* v. *State of Haryana*. The question, whether the contribution of a nominal amount from the public exchequer

would meet the requirements of the proviso to Section 6, had again come up for consideration in *Manubhai Jehtalal Patel* v. *State of Gujarat*. D.A. Desai, J. after referring to *Somawanti*, speaking for the three-Judge Bench observed thus: (SCC p. 555, para 4)

"It is not correct to determine the validity of acquisition keeping in view the amount of contribution but the motivation for making the contribution would help in determining the bona fides of acquisition. Further in *Malimabu case* contribution of Re 1 from the State revenue was held adequate to hold that acquisition was for public purpose with State fund. Therefore, the contribution of Re 1 from public exchequer cannot be dubbed as illusory so as to invalidate the acquisition."

14. *In Inderjeet Parekh Vs State of Gujarat* in which a somewhat restricted meaning has been given to the extremely broad parameters laid down in *Pratibha Nema's case (Supra),* but it has nonetheless been observed that if a reasonable amount of compensation had been drawn out Government funds, it would satisfy the requirement of a public purpose as per the Act. In the present case, as already mentioned above, we find that a substantial part of the compensation has, indeed, been paid by the State Government or by the Housing Board which clearly satisfies the test of public purpose. In this background, we endorse the finding of the Division Bench that the procedure envisaged in Part II and not in Part VII of the Act would be applicable. This is precisely what has been done.

15. The learned Counsel for the Appellants has also contended that as the housing scheme had not been prepared in terms of the 1972 Act it had no valid sanction. It has been highlighted that the entire scheme had been designed to help Bengal Peerless to make undue profits and the very purpose of 1972 Act had, thus, been frustrated.

16. The learned counsel for the respondent has on the contrary referred us to Sections 17, 18 and 27A of the 1972 Act

A to submit that the said Act specifically provided for the transfer of the acquired land to a Joint Sector Company for the purpose of the execution of the Housing Scheme with the previous approval of the State Government and that the scheme had indeed been framed under Sections 17 and 18 and thereafter B entrusted for execution to the Bengal Peerless. It has been submitted that though Bengal Peerless had been entrusted with the execution of the scheme the overall control remained with the Housing Board which was, in fact, an extension of the State Government itself and the State Government a fortiori retained C overall control in the execution of the scheme. We find merit in this submission. The record indicates that as a consequence of a Memorandum of Understanding dated 13th September 1993 a Joint Sector Company for the execution of the housing scheme had been created on 20th May 1994 and it was provided D that 49.5% of the shares capital would be held by each of the two i.e. the Housing Board and Bengal Peerless and the balance 1% would be held by the public and the company would be run independently by nine Directors, of whom five including the Chairman were to be nominated by the State Government. It is also relevant that the scheme had, in fact, been prepared by the E State Government after due deliberation and had been initiated as per the provisions of the 1972 Act by virtue of a meeting held on 17th May 2000 in the Office of the Secretary, Housing Department, the Commissioner of the Housing Board, the Land Acquisition Collector and several other senior officials and the F proposal had been mooted for the acquisition of the land for the purpose of a scheme for weaker sections of society and others with modest incomes. The scheme also provided for the construction of 1800 dwelling units of various categories with at least 50% to be earmarked for the lower and middle income G groups with the price subsidized for the former and all flats for the middle income group to be provided on "no profit no loss" basis, and for facilities for schools, roads etc. for the benefit of those who were ultimately to reside in the dwelling units. Significantly also, the scheme provided that there would be no H escalation on account of any reason whatsoever for the price

charged for the dwelling units and that the allotment of the dwelling units would be on the basis of a lottery. Section 18 of the 1972 Act which deals with the matters to be provided for by housing schemes is reproduced below:

> **"Sec.18. Matters to be provided for by housing schemes.** – Notwithstanding anything contained in any other law for the time being in force, a housing scheme may provide for all or any of the following matters, namely :-
>
> (a) the acquisition by purchase, exchange or otherwise of any property necessary for the scheme;
>
> (b) the construction and reconstruction of buildings;
>
> (c) the sale, letting out or exchange of any property included in the scheme;
>
> (d) roads, drainage, water-supply, lighting, schools, hospitals, dispensaries, marketplaces, parks, playgrounds and open spaces within a housing scheme;
>
> (e) the reclamation or reservation of lands for markets, gardens,schools, dispensaries, hospitals and other amenities in a housing scheme;
>
> (f) the letting out,management and use, of the Board premises;
>
> (g) accommodation for any class of inhabitants;
>
> (h) the advancing of money for the purpose of the scheme;
>
> (i) the collection of such information and statistics as may be necessary for successful implementation of the scheme;
>
> (ia) development of any urban or rural area for successful implementation of housing schemes and for purposes ancillary or incidental thereto;
>
> (j) any other matter for which, in the opinion of the Board or the State Government, it is expedient to make provision

A with a view to providing housing accommodation and to improving or developing of any area included in a housing scheme."

17. We find that the scheme as laid fully satisfies the tests laid down in this provision. Sections 17, 27A and 28 of the 1972 B Act read as under:

" 17. Powers and duties of Board to undertake housing schemes.-

(i) Subject to the provisions of this Act the Board may, C from time to time, incur expenditure and undertake works for the framing and execution of such housing schemes as it may consider necessary and such housing schemes may include housing schemes in relation to lands and buildings vested in or in the possession of the State D Government.

(2) The State Government may, on such terms and conditions as it may think fit to impose, entrust to the Board the framing and execution of any housing scheme [,whether provided for by this Act or not,] and the Board shall E thereupon undertake the framing and execution of such scheme.

(3) The Board may, on such terms and conditions as may be agreed upon and with the previous approval of the F State Government, take over for execution any housing scheme, on behalf of a local authority or co-operative society, or on behalf of an employer, for building houses mainly for the residence of the employees of such local authority, co-operative society or employer, as the case may be [or for the residence of the members of such co- G operative society].

27A. Power to entrust existing, or new, joint sector company with housing scheme.- Notwithstanding anything contained in this Act, the Board may, if it considers H it necessary so to do in the public interest and is satisfied

that an existing, or new, joint sector company is willing to comply, or has complied, with such terms and conditions as the State Government may think fit to impose,entrust, with the previous approval of the State Government,any existing, or new, joint sector company with any housing scheme for execution, and different existing, or new, joint sector companies may be so entrusted with different housing schemes for execution.

28. Power to acquire.- *(1)* Where any land is needed for the purpose of a housing scheme or for performing any other duties or functions of the Board, the Board may enter into an agreement with any person for the acquisition by purchase, lease or exchange, of his rights and interests in such land either wholly or in part, on payment of an amount proportionate to the loss or deprivation caused to the enjoyment of the land.

(2) The Board may also take steps for the compulsory acquisition of any land or any interest therein required for the execution of a housing scheme or for performing any other duties or functions of the Board and such acquisition of any land or any interest therein shall be deemed to be acquisition for a public purpose within the meaning of the Land Acquisition Act. "

18. We observe that Section 27-A specifically authorizes the Housing Board in public interest to entrust a housing scheme to a Joint Sector Company with the previous approval of the State Government. We find that there is no warrant for the proposition that unless a budgetary provision is made by the Housing Board or that a final scheme is prepared in accordance with Section 23 of the 1972 Act, no land can be acquired for the purpose of execution of a housing scheme. It is significant that Section 17 of the 1972 Act itself gives the power to the Housing Board to make a scheme and that Section 27A further authorizes the Board in public interest to entrust a housing scheme to a Joint Sector Company for execution and for that purpose

A Section 28(2) of the Act further authorizes the Housing Board to take steps for compulsory acquisition of any land required for the purpose of a housing scheme. While dealing with Section 35 of the Tamil Nadu Housing Board Act, 1961 which is akin to Section 17 of the 1972 Act, this is what this Court had to say in
B *L. Krishanan Case (supra):*

> ".....The Housing Board is under an obligation to carry out certain other schemes also as are provided in these sections. Sub-section (2) of Section 35 states that the Government may on such terms and conditions as they
C may think fit to impose, transfer to the Board the execution of any housing or improvement scheme not provided for by the Act. On such transfer, the Board is under obligation to undertake the execution of such scheme as if such scheme has been provided for by the Housing Board Act."

D

> Para 15. These provisions make it abundantly clear that the duty of the Housing Board is not merely the execution of the housing or improvement scheme prepared and published by it under the Act but extends to executing other schemes as well, as are made over to it or agreed
E to be undertaken by it. Now, when Section 35(2) speaks of transfer to the Board the execution of any housing or improvement scheme not provided for by this Act, it certainly cannot mean a scheme prepared in accordance with the provisions of the Housing Board Act. Moreover, while
F transferring the scheme to the Housing or improvement scheme prepared in accordance with the Housing Board Act. Here again, the taking over the scheme by the Housing Board is subject to such terms and conditions as may be agreed upon by both. Section 36 indeed discloses that
G what is entrusted to the Housing Board is the job of clearance or improvement of any slum area. The Government while directing the Board to undertake the clearance or improvement of a particular area can also direct the Board to frame and execute "such housing or
H improvement scheme under this Act as the Government

may specify" and the Board is obliged to execute such scheme as if such scheme is prepared by the Act." A

Para 16. In such circumstances, it would not be right to contend that unless a final and effective scheme prepared in accordance with the provisions of Chapter VII of the Housing Board Act is in existence, the Government cannot B issue a notification under section 4 of the Land Acquisition Act for acquiring the land required for execution of the schemes by the Housing Board. To repeat, the Housing Board is obliged to execute not only the housing or improvement schemes prepared under the said Chapter C but also certain other schemes referred to in Sections 35 and 36. For example the Government may conceive a particular scheme and ask the Housing Board to execute on such terms and conditions as the Government may specify. In such a situation, there is no question of preparing D a housing or improvement scheme by the Housing Board in accordance with the provisions of Housing Board over again. So far as the scheme framed by the Government is concerned, there is no enactment governing it. It can, therefore, be a scheme as ordinarily understood. Similar E would be the case where the scheme undertaken by a local authority is made over the Housing Board by mutual agreement."

19. In *West Bengal Housing Board & Ors. vs. Brijendra Prasad Gupta & Ors.* (1997) 6 SCC 207 while taking an overall F view of the entire matter and also dealing with the submission that some profit motive could be involved in favour of a Joint Sector Company executing a housing scheme, this is what this Court had to say:

G

"Para 19. In this background it is difficult for us to accept the submissions of the Writ Petitioners that the purpose for which the requisition had been made was not a public purpose within the meaning of the Act or that the circumstances of the cases did not justify the invocation of H

A the provisions of the Act or that the exercise of powers under that Act was colourable exercise of power.

Para 25. It is a matter of common knowledge that there is acute shortage of housing accommodation both in rural and urban areas of the country. Since late the prices of the B real estate have sky-rocketed making it beyond the reach of low income and middle income people. The State has duty to perform to give shelter to homeless people specially to people in the income group. In the present case the State was unable to meet this gigantic task. In the C background of shortage of resources which the State has the legislative enacted the Housing Board Act and constituted the Housing Board to meet this challenge of providing houses to the people falling in the low income group and to others. Again the Housing Board was unable D to meet the challenge. The Housing Board Act was amended to bring in the concept of joint venture in order to tap the resources of the private sector. Thus a joint venture came into being as disclosed in the supplementary affidavit of the State as to how the process of starting of E joint venture had been gone into and how the Board of Directors of the joint sector company has been constituted and how the State and Housing Board exercise control over this joint sector enterprise.

26. Simply because there is an element of profit, it could F not make the whole scheme illegal. A private entrepreneur will certainly look to some profit but to see that the profit motive does not lead to exploitation even of the rich and that the houses are available to the poor people and to middle class people at nominal or affordable prices, or G even on no-profit-no-loss basis, the Housing Board exercises the necessary control. It is certainly a public purpose to provide houses to the community especially to poor people for whom the prices are beyond their means and they would otherwise never be able to acquire a house.

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27. What has been done in the present case is that the profit earned on sale of flats of HIG have been pumped in to subsidize the prices of the houses falling in LIG and in this there would certainly be an element of profit both for the Housing Board as well as the private company in the joint venture for selling flats of HIG. We fail to see how public purpose is not being served in the present case.

28. The Court must shake off its myth that public purpose is served only if the State or the Housing Board or the joint sector company does not earn any profit. There cannot be any better authority than the State or the statutory corporation to supervise or monitor the functions of the joint venture company. Courts will certainly step in if the public purpose is sought to be frustrated.

29. In the present case Directors appointed by the Housing Board/State on the Board of Directors of the joint venture company would certainly see that no runaway profit is earned and that sale price of HIG houses is guided by market forces but there is no exploitation. Every section of the society needs protection from exploitation. It is however not possible nor desirable to lay down any principle as to how this is to be done.

33. We find in the present backdrop the inability of the State Government and the Housing Board to meet the challenge to achieve the target of even constructing 50,000dwelling units in urban areas to tackle the acute problem of homelessness for different categories of people particularly those falling in Lower Income Group (LIG) and Middle Income Group (MIG); the State Legislature amending the Housing Board Act and providing for incorporation of a joint sector company for executing the housing scheme on the terms and conditions to be approved by the Government; selection of the private entrepreneur for incorporation of the joint sector company with the Housing Board; the constitution of the Board of

A Directors of the joint sector company; the control of the Housing Board and the State Government over the joint sector company to execute the scheme of the housing project; control on the fixation of prices of the flats to be constructed by the joint sector company; relevant factors
B taken into consideration for execution of the housing project and all these to tackle the urgent and growing need of providing shelter to the LIG and MIG people when it is not possible for those people to acquire a house of their own with escalating real estate prices; it cannot be said that
C the public purpose is not being served or the incorporation of the joint sector company,viz. Bengal Peerless Housing Development Co.Ltd. and the execution of the housing project "Anupama" by this joint sector company, in the given circumstances, on the land in question which is part
D of the bigger piece of land is not in public interest. The Housing Board acts as regulatory body and the State Government oversees the housing project and has also imposed certain terms and conditions. No ulterior purpose has been alleged and it cannot be said that the power exercised by the State authorities are in any way arbitrary
E or irrational or there is any abuse of power. Rather the legal compulsion of the State and the Housing Board to get the housing project executed through a joint sector company is quite understandable. We also find the impugned action is within the purview of law and is valid."

F

20. In view of what has been observed above, and in the background of the present case, it becomes crystal clear that though the execution of the housing scheme has been entrusted to a Joint Sector Company, the overall control
G over the project has been retained by the Government controlled Board of Directors, full details of the scheme have been provided with large provisions for the benefit of the poorer sections of society, with the allotment of tenements either on a subsidized price or on "no profit no loss" basis for the low and middle income groups

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respectively, allotment by draw of lots to avoid any arbitrariness and a complete freeze on the price of residential accommodation with no escalation whatsoever for whatever reason and the provision of facilities for effective and comfortable living such as schools, roads, sewage etc. We are, therefore, of the opinion that the housing scheme fully satisfies the tests laid down by the Supreme Court in the two cases cited immediately above.

21. There is yet another aspect which needs to be dealt with. It appears from the record, and it was so pointed out during the course of arguments, that the appellants had not filed any objection to the acquisition on the plea that some assurance had been held out that they too would be allowed to participate in the housing scheme. This fact has been denied by the respondents and it has been emphasized that as per letter dated 8th March 2001 the land-owners had, in fact, waived their right to challenge the acquisition. This letter is reproduced hereunder in extenso:

"To Date:8th March 2001

The Special Land Acquisition Officer,

South 24 – Parganas, 5th Floor,

New Treasury Buildings,

Alipore,Kolkata – 700027.

Sir,

Re: **Barakhola Mouza J.L.No.21 P.S.Kasba**

This has reference to your acquisition notice dated 12.1.2001 for 12.67 acres land in Plot No.125 & 126 of the subject mouza.

In this connection, I would like to submit that I am the Power of Attorney (Registered) holder of the successors of late Abhay Pada Pain who was the owner of the aforesaid plots as evident from the ROR. A copy of the P/A is enclosed for your kind perusal.

A Incidentally Plot No.126 was duly demarcated showing the vested portions and the retained portions by the District Authorities as per copy of the Map enclosed along with a copy of the Minutes of the meetings held in Chamber of the then ADM & L.R.O.South 24 – Parganas on 20.3.1996.

B Subsequently 13.56 acres of land was sold to the following parties and registered under section 41 on 25.6.1999 of which deed copies are enclosed. Since the tax has not been assessed, as yet for value to ascertain additional stamp duty, the same have not been paid so far. However,
C enquiries are under way, but in the meantime Khazna has been paid up –to – date as per copies of receipts dt.18.1.2001 enclosed herewith.

The transfers are:-

D a) Sri Debabrata Choudhary :

b) Sri Shreekanta Ray : 6.00 acres

c) M/s. Anarean Estate Co.Ltd. :

d) Sri Swadesh Ghosh :
E

e) Sri Swapan Dey :

f) Smt.Ila Dey : 6.58 acres

g) Sri Saptashi Dey :

F h) Smt.Basanti Ghosh :

The aforesaid transferees did not raise any objection to govt. acquiring. The land for housing, in face, I had moved an idea to West Bengal Housing Board and willing to
G negotiate along with the transferees' price for your acquisition.

Please do let me known for any further information and clarification /assistance, a may be required.

H Thanking you, I am

Yours faithfully A
Sd/-Urmila Ray
Constituted Attorney of
Smt. Lily Paul
Smt. Dolly Paul
Smt. Mira Rani Basu B

Enclosed

a) Copies of 8 nos.deed

b) Copy of power of attorney

c) Copy of witness by ADM,DL,LRO C

d) Copy of Minutes of meeting dt. 26.3.96

e) Copy of Khana receipts

C 735407 dt.Rs.32,277/- D

C 735408 dt.18.1.01 for Rs.2709"

22. It is significant that this letter written by the Attorney Urmila Roy, on behalf of all the land owners spells out that the owners had in fact been willing to negotiate the price for the land at the time when the acquisition were still incomplete as only the Notification under Section 4 of the Act had, at that stage, been issued (4th December 2000). It is also significant that the declaration under Section 6 had been issued on 29th November 2001 and the award rendered on 27th December 2003. It is, therefore, evident that the land owners had, in fact, acquiesced to the acquisition and cannot now turn around to say that the acquisition was bad in law. E F

23. In view of the above findings, we are of the opinion that no further discussion on the other marginal issues that have been raised, needs to be made. The appeals are, accordingly, dismissed. G

N.J. Appeal dismissed.