PRANITA POWERLOOM COOP. SOC. LTD. A

v.

STATE OF MAHARASHTRA & ORS.

(Civil Appeal No. 2566 of 2009)

APRIL 15, 2009 B

[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]

LAND ACQUISITION ACT, 1894:

Sections 3(e), 4, 5A, 6(1), 37(f)(vii) – Allotment of land – Subsequent cancellation on the ground that complete information not furnished – Held: High Court not considered important objections – Merely because s.5A enquiry is pending and objections could be taken by the parties, State Government cannot cure the illegality committed in the issuance of s.4 Notification – Matters remanded to High Court for fresh consideration – Maharashtra Regional and Town Planning Act, 1966 – Section 125. C D

Pratibha Nema & Ors. v. State of M.P. & Ors. **(2003) 10 SCC 626 and** *R.L. Arora v. State of U.P.* **AIR 1962 SC 764, referred to.** E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2566 of 2009.

From the Judgment and Order dated 01.12.2006 of the High Court of Judicature at Bombay in W.P. No. 8967 of 2005. F

WITH

C.A. Nos. 2570 of 2009, 2572-73 of 2009, 2568 of 2009, 2574-2575 of 2009, 2567 of 2009, 2569 of 2009. G

S.K. Verma Vijay K. Singh, Manoj K. Singh Meenakshi Arora, Sudhanshu S. Choudhari, Naresh Kumar, Arundhati S.

 H

A Sukhtankar, Uday U. Lalit, Prasenjit Keswani, Manu Beri, Gaurav Agrawal, Bhupender Yadav, S.S. Shemshery, Kiran Bala Sahay and R.C. Kohli for the Appellant.

Jaideep Gupta, A. Mariamputham, Shivaji M. Jadhav, B Sanjay V. Kharde, Asha Gopalan, Rukhsana Choudhary for the Respondents.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. This judgment shall dispose of C SLP (C) No. 12077/07, as also SLP(C) No. 11250/08, SLP(C) No.11345-11346/08, SLP(C) No.11357/08, SLP(C) No. 23332-23333/08, SLP(C) No.23335/08 and SLP(C) No.20656/08.

D 2. Leave granted in all the Special Leave Petitions.

3. One Ichalkaranji Industrial Cooperative Estate filed a Writ Petition No. 8967/05 before Bombay High Court, impleading the State of Maharashtra, Collector for District of Kolhapur, Commissioner for Directorate of Industries and Land E Acquisition Officer, Kolhapur initially. One Pride India Cooperative Textile Park Ltd. came to be joined as respondent No. 5 later on. In this petition, validity of the communication-cum-order passed by the State of Maharashtra and the Collector dated 30.08.05 was challenged. By that order the acquisition F started in favour of the Ichalkaranji Cooperative Society Ltd. (hereinafter called 'Society' for short) was cancelled. It was contended, inter alia, that the Society was a registered cooperative society under the Maharashtra Cooperative Societies Act and was established for the purposes of erecting G industrial estates for the benefit of its members and that it was active right from 1974 and was also instrumental in setting up Industrial Estate for the areas Kolhapur and Ichalkaranji.

4. It was claimed that in the year 1974 the Kolhapur District Planning Committee had assured the Society that an area of H

600 acres would be made available to it for the purpose of erecting such industrial estate. Initially in the year 1980, the area of 100 acres of land was sought to be acquired for the benefit of the said Society and that acquisition was completed in the year 1988 by the Land Acquisition Officer-respondent No.5. The Society had also paid Rs.37.50 lakhs towards the acquisition charges. It was further contended that after the land was handed over to the Society, a layout of the land was prepared and some 457 plots were made therein. The Society made infrastructure for establishment of the industrial estate including roads, water supply, sewerage, electricity connection, petrol pump, recreation grounds, roads for transportation etc.

5. The Society further contended in its petition that several persons, who were in the waiting list of the State Cooperative Society as their members for allotment, made further cry for the allotment of plots to them so that they can set up industrial units in that area. Considering the need for relocation for the industrial estate, a proposal came to be made by the Society to the respondents State authorities that additional land of 134 acres at village Tardal be made available to them so that the infrastructure which was already erected by the Society in the industrial estate at Shahpur could be used and utilised for setting up the industrial estate at Tardal which was barely beyond a road and was in the vicinity of the earlier industrial estate set up by the Society. This proposal was made on 30.08.02. According to the further contentions, this proposal was recommended by respondent No.1 through the Deputy Registrar (Industries) by communication dated 11.09.02.

6. It was further contended by the Society that on 19.03.02, it was informed by the Land Acquisition Officer that it must file the said proposal for acquisition in the prescribed form (g) along with the necessary revenue records like 7/12 extract and other relevant information. Accordingly, some further enquiries were made from the Society with respect to the other land. It was further contended in the petition that the Society, immediately

A on 23.09.02, had informed the State Government about the queries made to them and, thereafter, the Joint Registrar by his communication dated 25.09.02 to the Development Commissioner, who recommended the acquisition by his letter dated 17.12.2002 of 134 acres to Collector, Kolhapur, had B recommended the acquisition in favour of the Society. It was further contended that by the communication-cum-order dated 26.02.04 the Collector of Kolhapur had held that the land should be acquired on behalf of the Society. A further proposal was made that since the acquisition was for the benefit of the C authority other than the Government, there should be a nominal compensation paid by the Government of Rs. 100/- so that the acquisition proceedings could begin. The Society further contended that it requested the State authorities to accord their consent to pay Rs. 100/- so that the acquisition proceedings D may begin. The Town Planning Department by its letter dated 02.03.04 sought for some information from the Society. Thereafter, there was a letter dated 29.02.04 informing the Society that the State has not consented to pay the said sum of Rs. 100/- and, therefore, the acquisition would be termed to be an acquisition for the company.

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7. The Society further pleaded that it was informed by the State Government by its letter dated 07.10.04 and 13.05.05 that the sum of Rs. 100/- was likely to be sanctioned soon. Thereafter further information was sought by the Town Planning F Department by letter dated 04.05.05 which was given by the Society by letter dated 24.05.05. It was pleaded that at this stage the Cooperative Society apprehended that certain portion of the land might be given in favour of the third parties and especially in favour of one Pride India Cooperative Textile G Park Ltd. which was joined as respondent No.5 and, therefore, the Society by its communication as well as by the advertisement in the local newspapers informed the State authorities and public at large that no action should be taken which was detrimental to the interests of Society. In pursuance H of that, the Commissioner for Directorate of Industries by letter

dated 06.10.05 directed the Collector, Kolhapur that the land should be kept reserved in the industrial zone and no industrial activity should be sanctioned in the said area and the land in favour of the Society should be acquired at the earliest. In the wake of all this, the Collector by his letter dated 30.08.05 informed the Society that it had not complied with the several requirements of law and, hence, acquisition proposal of the Cooperative Society was being cancelled. In short, the Society challenged this letter dated 30.08.05 on various grounds including the ground that its proposal in its favour of land acquisition had reached almost finality and the State Government could not, in the wake of all what had happened, cancel the proposal. It sought for the quashing of that letter. In its prayer it sought for a writ of Mandamus directing the Collector Kolhapur to cancel the impugned communication-cum-order dated 30.08.05. Some interim reliefs were also prayed for.

8. This petition was opposed by the Land Acquisition Officer who filed a detailed affidavit mainly stating that the relief claimed by the said Cooperative Society could not have been granted in its favour. It was pointed out that the land was not reserved only for the petitioner in the Regional Plan and could be developed by each of the owners in accordance with the reservation. It was also pointed out that the information sought from the respondent No. 4 herein in accordance with Land Acquisition Act and Rules had not been supplied by it for about a year and it had not complied with the requirements and hence, the cancellation order had been passed. It was also pointed out that sufficient industrial zone had been earmarked in the Regional Plan of Kolhapur Ichalkaranji.

9. The other Society, namely, the Pride Powerloom Cooperative Society Ltd. also appeared in the matter and pointed out by affidavit that it had interest in about 46 acres of land, which was acquired by private negotiation and that the Society could not claim exclusively for the acquisition.

10. This petition was, however, compromised on the basis

A of the consent terms presented to the Court. In these consent terms dated 01.12.06 only two Societies were parties to that petition – Ichalkaranji Industrial Cooperative Estate and the 5th respondent, namely, one Pride India Cooperative Textile Park Ltd. But before that an order dated 16.11.06 came to be B passed by the High Court suggesting that there should be negotiations between the Society and Pride India Cooperative Textile Park Ltd. That order reads as thus:

> "Having heard Mr. Jahangirdar the learned senior counsel with Mr. Dani for the petitioner-Society-Society and Mr. C Rajure, learned counsel for the respondent No.5 Society, we are of the considered opinion that at the first instance the petitioner-Society and the respondent No.5 Society must arrive at a compromise in sharing the proposed land for acquisition and thereafter it would be appropriate for D them to approach the Collector with this compromise reduced in writing so as to enable him to issue a notification under Section 4 of the Land Acquisition Act, 1894. Undoubtedly, both the petitioner-Society as well as the respondent No.5 will have to deposit the compensation E amount in the Collectorate before the declaration under Section 6 of the said Act is published.
>
> Mr. Rajure seeks time to take instructions. Time granted, S.O. for two weeks.
>
> F *Status quo* in respect of the subject land be maintained until the next date."

11. Ultimately the consent terms were given on 01.12.06 which were recorded by the High Court incorporating those G consent terms in its order. On the same day the petition was disposed of directing the Collector, Kolhapur to proceed with the acquisition proceedings as soon as the legal compliance was fulfilled by the Society. For better understanding, we would quote the whole order of the High Court. It reads as thus:

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"1. As per the order passed by us on 16th November, 2006, the petitioner-Society and respondent No.5 negotiated for an amicable settlement and these negotiations have resulted in the parties agreement in terms of the consent terms which have been placed before us. The consent terms are taken on record and marked as "X" for identification. A copy of the same has already been supplied to the learned AGP.

2. The Affidavit-in-reply filed by Shri S.D. Chavan, the Special Land Acquisition Officer (XI), Kolhapur indicated that the claim between the petitioner-Society Society and respondent No.5 Society, over the same land was coming in the way of initiating acquisition proceedings. Undoubtedly, under the scheme of the Land Acquisition Act, 1894 the Cooperative Societies can approach the State Government for acquiring land on submitting a scheme for the proposed development. The petitioner-Society No.5 will, therefore, now approach the Collector, Kolhapur and submit a scheme on the portion of the land identified in the consent terms. We have also noted that the respondent No.5 is satisfied with the land, it has already acquired by private negotiations and the remaining land from the subject reservation is left for the petitioner-Society Society alone. It is, therefore, necessary for the petitioner-Society Society to comply with statutory requirements including the deposit of compensation amount.

3. We direct the collector, Kolhapur to proceed with the acquisition proceedings as soon as legal compliance are fulfilled by the petitioner-Society.

4. Mr. Jahangirdar, learned senior counsel, on instructions, states that the amount of Rs.

A 50,00,000/- (Rupees Fifty Lakhs) will be deposited by the petitioner-Society Society within a period of two months from today with the Collectorate, Kolhapur, so that the Notification under Section 4(1) of the Land Acquisition Act, 1894 is issued and the B balance amount will be deposited before the declaration under Section 6 of the said Act is issued, so as to make a total of 90% of the compensation amount that may be worked out by the Land Acquisition Officer.

C 5. The Notification under Section 4(1) of the said Act to be issued before 19th February, 2007, subject of course, to the compliance of the statutory requirements by the petitioner-Society.

D 6. The requirement of Government contribution of whatever amount will not come in the way of initiating the acquisition proceedings."

12. The basic features to be noted in this consent order E are:-

1. That the State of Maharashtra which was an opposite party had never given the consent though it was the most affected party and the writ petition was sought against it.

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2. That the feasibility of the land acquisition and the right of the petitioner and respondent No.2 for such land acquisition or the nature of rights of the Society and respondent No.5, were never examined and it G was almost taken for granted that the whole land was liable to be acquired for the private persons like the Society and the 5th respondent therein.

3. That though apparently this was an acquisition of land for companies covered by Part VII of the Act, H

the Court proceeded to pass a direction in paragraph 6 that the requirement of the Government contribution would not come in the way of initiating the acquisition proceedings. In fact till that time the Government had not agreed to contribute anything so as to take out the acquisition from Part VII and show it to be an acquisition by the Government.

4. The consent order was without any reasons.

13. It seems that on 30.12.06, the Collector, Kolhapur called upon the 4th respondent herein i.e. the Ichalkaranji Industrial Cooperative Estate to deposit an amount of Rs. 50 lakhs and to submit a fresh proposal for acquisition and also to deposit 2/3rd amount of the cost of acquisition before Section 4 Notification was issued in terms of the Government resolution dated 14.06.01.

14. The Special Land Acquisition Officer, respondent No.3 herein, issued a Notification dated 12.02.07 under Section 4 in respect of the lands which the present appellant claims to be owned by it, namely, Kamakshi Tex-Fab Pvt. Ltd. This Notification dated 12.02.07 which was passed in terms of judgment and order dated 01.12.06 quoted above, was challenged by way of a Wit Petition No.3296/07 wherein review of the order dated 01.12.2006 was sought for by as many as 11 petitioners, including the present petitioner.

15. During the pendency of this writ petition, respondent No. 1, State of Maharashtra declined the Government contribution in support of the proposal of the land acquisition by its communication dated 21.06.2007. While the matter was pending, certain other parties filed Special Leave Petition before this Court being SLP (C) CC No.5574/07 (converted to SLP (C) No.12077/2007) wherein this Court had issued notice on 13.07.2007. Pride India Cooperative Textile Park Ltd., respondent No.5 herein, filed a reply affidavit and the petitioner

A also filed a further affidavit in Writ Petition No. 3296/07 pending before Bombay High Court wherein it was pointed that State of Maharashtra had declined the Government contribution. The Special Land Acquisition Officer, respondent No.3 herein also filed its reply by way of affidavit before the High Court and it B was pointed out that the Notification was issued only to obey the order of the High Court in Writ Petition No. 8967/05 which was an order passed on consent.

16. The other petitioners also approached the High Court by filing Writ Petition No.1954/2008 seeking therein review of C order dated 01.12.06 and also praying for quashing of the Notification dated 12.02.07. The High Court thereupon by its order dated 04.04.2008 dismissed both the writ petitions. All other petitioners who were the co-petitioners before the High Court in Writ Petition No.3296/07 as also in Writ Petition D No.1954/07, are party respondents herein.

17. In the impugned judgment passed in Writ Petition No. 3296/07 the High Court has clarified that the Writ Petition No. 8967/05 was decided on the basis of the settlement arrived at E between Ichalkaranji Society and Pride India Cooperative Textile Park Ltd. The High Court further took note that the petitioners in Writ Petition No. 3296/07 were Cooperative Societies, a private limited company, a proprietary firm as well as a Hindu Undivided family and individual. The High Court also F noted the grievance that it was a land under the ownership of the petitioner which was the concerned land and that the same was directed to be acquired by the Court without even hearing them. The High Court proceeded to find that all the petitioners whose lands were concerned had filed objection certificates under Section 5A of the Land Acquisition Act. The High Court, G therefore, came to the conclusion that since the mandatory procedure in Section 5A was to be followed in the Land Acquisition case, there would be no prejudice caused to the petitioner because of the land acquisition. The petitioners had also raised an objection before the High Court that there was H

no contribution made for the public funds by the State Government and, therefore, it could not be said that the acquisition was for the public purpose, as defined in Section 3(f) of the Act. For this purpose, the petitioners therein have relied on a decision of this Court in *Pratibha Nema & Ors. V. State of M.P. & Ors.* [(2003) 10 SCC 626]. The High Court, on this issue, extensively quoted from the judgment of this Court in *R.L. Arora v. State of U.P.* [AIR 1962 SC 764] but made no comment thereon. It merely recorded that there was no case made out for recalling the order dated 01.12.06. It disposed of the writ petition with three directions:-

(1) that the order dated 01.12.06 which was called in question in the writ petition did not give a go bye to an enquiry under Section 5A and that the said enquiry must be completed before issuing a declaration under Section 6.

(2) that the contribution in favour of respondent No.4 from the State Government/public funds or from any local authority must be received by the Collector before the declaration under Section 6 is due to be issued as per the extended period of one year, failing which the acquisition will have to be as per the procedure laid down in Part VII of the Act.

(3) that the interim order which it had passed on 15.06.07 would stand vacated forthwith and the one year period for issuing the declaration under Section 6 shall stand extended taking into consideration that the stay order passed on 15.06.07 and was vacated on the day when the said judgment was passed.

18. The High Court, therefore, disposed of the writ petition confirming the judgment, dated 01-12-06 dismissing Writ Petition No. 3296/07. This was severely criticised by the learned counsel appearing on behalf of the appellants herein.

A The main thrust of the argument of Shri U.U. Lalit, learned Senior Counsel and the other learned counsel who appeared with him, was that the initial judgment dated 01-12-06 had proceeded on the incorrect premise as if the whole land was exclusively reserved for respondent No. 4 Ichalkaranji Society, B which was not the fact. Learned counsel pointed out that the State authorities had declined to proceed with the acquisition and in the original Writ Petition the respondent No.4-Ichalkaranji Society had failed to show any right in its favour for initiating the process of land acquisition. Learned counsel pointed out C that there was nothing to suggest that this land was reserved in favour of the 4th respondent and that the only factual situation was that the user of this land was specified as an industrial zone as per the plan under MRTP Act. According to the learned counsel this did not give any right to the 4th respondent to D approach the Court and to monopolise by insisting on the land acquisition in its favour alone.

19. Learned counsel further pointed out that the impugned order dated 30.08.05 passed by the Collector, Kolhapur clearly showed that there were serious infirmities in the proposal given E by the 4th respondent and, therefore, the proposal was rightly rejected. Learned counsel then further urged that even if the order dated 30.08.05 could be presumed to be incorrect, still the 4th respondent could not have rushed with the writ petition without there being any specific right in its favour.

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20. Learned counsel urged that the High Court, by passing the order dated 01.12.06, presumed as if this was a private estate meant for the 4th respondent and the 5th respondent herein i.e. Pride India Cooperative Textile Park Ltd. It was further pointed out that the correctness or otherwise of the order dated G 30.08.05 was never gone into by the High Court and it was as if there were only two players in the field – 4th respondent and the 5th respondent the private persons. The High Court asked the respondent Nos. 4 and 5 to compromise the matter which was a totally incorrect practice. The High Court was, in the first

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place, required to decide about the right of the 4th respondent and further to take into consideration the objections raised by the State Government and test the correctness of the order dated 30.8.2005. A

21. Learned counsel pointed out that the writ petition was opposed by a specific reply affidavit by the State Government which was not even referred to by the High Court and strangely enough the High Court chose to dispose of the Writ Petition merely on the compromise between respondent Nos. 4 and 5 presuming there existed a right exclusively in favour of both the respondents for the land acquisition. The learned counsel further suggested that this was a glaring error which could have been corrected in the review in Writ Petition No. 3296/07. It was pointed out that even while disposing of that petition, the High Court did not bother to correct this error which was apparent on the face of the record. Learned counsel further pointed out that the interests of the petitioner-appellants herein who were the owners of the land were adversely affected by compromise between the two private parties i.e. the 4th respondent and the 5th respondent. It was also pointed out that there are some factual mis-statements in the order dated 01.12.06 about the affidavit of Shri S.D. Chavan opposing the writ petition to the effect that the conflicting claims of respondent Nos. 4 and 5 were coming in the way of initiating acquisition proceedings and hence in view of the compromise between the two private parties, there was no impediment in acquiring the lands, as if the said land was reserved for respondent No.4 only. The learned counsel took pains to point out that there was no whisper in the affidavit of Shri Chavan about the conflicting claims. It was further argued that the only reason why the State of Maharashtra proceeded with the land acquisition proceedings was the direction incorrectly given by the High Court. Lastly, it was argued that though the State of Maharashtra had declined the Government contribution for the proposal of the 4th respondent, yet the 4th respondent misled the authorities by pointing out that the writ petition filed by the present B C D E F G H

A appellant-petitioners had been dismissed and threat of contempt was given to call for the release of Government contribution. The said Government contribution was stayed only on the petitioners pointing out to the Government about the pendency of the Special Leave Petition before this Court. It was B also contended that the acquisition in this case can never be covered by Part II of the Act and had to be proceeded ahead as an acquisition for the company, if at all it could so proceed.

22. As against this Shri Jaideep Gupta, learned senior C counsel appearing on behalf of the respondents and more particularly the 4th respondent supported the orders of the High Court. The mainstay of the arguments of Shri Gupta is that the 4th respondent had set up an industrial estate as far back as in the year 1960. In the year 1974 there was a Government decision to establish an industrial estate in the villages of D Kabnoor, Tardal and Shahpur and Government itself had recommended that up to 600 acres of land would be made available to the estate over a period of time. Out of those 600 acres, 62 acres of land was made available in the year 1978 and further 68 acres were acquired by the State in the year E 1986. In the year 2002 the society sought for another 134 acres at Tardal which was adjacent to the industrial estate. Shri Gupta argued that the total membership of the society was 4200 and it was to only about 1040 members that industrial plots could be made available and that about 3160 members were in the F waiting list of the Society and as such it cannot be said that there was any irregularity in the land acquisition proceedings. Shri Gupta also relied on Section 125 of the Maharashtra Regional and Town Planning Act, 1966 which provides for compulsory acquisition of land needed for the purposes of G regional plans, development plans or town planning schemes. It was tried to point out that there is a regional plan wherein it is specifically mentioned that the industrial zone earmarked within Ichalkaranji and Jaisingh Pur complexes could be acquired by the cooperative industrial estate existing there, if H not acquired by the Maharashtra Industrial Estate at that time.

It was pointed out that the Ichalkaranji Society was the only existing society at that time. It was then submitted by Shri Gupta that the Pride India Cooperative Textile Park Ltd. was also another relevant player in the field who intended to establish a textile park in 46 acres of the land. He further pointed out that the proposals of the land acquisition were rejected only because the contribution by the State Government was not forthcoming which, according to the learned Senior counsel was a fault not on the part of the Society or Pride India Cooperative Textile Park but on the part of the State Government.

23. According to the learned counsel, the earlier proposals were rejected on the ground that the respondent Society did not answer the queries required for such acquisition. Learned Senior counsel further pointed out that those queries were irrelevant inasmuch as the acquisition was for Part II and not Part VII. Learned senior counsel very strenuously pointed out that since the proposal was rejected on the incorrect grounds, the Society had to file the writ petition before the High Court. According to the learned Senior counsel, the High Court had taken a practical and pragmatic view of the matter and encouraged the Society to compromise its disputes and differences with Pride India Cooperative Textile Park, as it appeared to the High Court that the real difficulty coming in the land acquisition proposal by the Society was the proposal of Pride India Cooperative Textile Park which was also put forward before the Collector. It was on this ground that the High Court correctly ordered the Collector to issue a Notification under Section 4. Learned Senior counsel also pointed out that it was only the State Government which could have been aggrieved by such order of the High Court which it chose not to challenge and it allowed the order dated 01.12.06 to become final. Therefore, the order was binding in so far as the State Government was concerned. Learned Senior counsel also pointed out that the State Government had ultimately agreed to direct the sum of Rs. 100/- as its contribution and that it had fully stood behind the Societies-Ichalkaranji and Pride India

A Cooperative Textile Park.

24. Learned Senior counsel tried to urge that the decision to issue Section 4 Notification was not because of the order of the High Court, as, if the State Government did not issue B such a Notification it could have appealed against the order of the High Court directing the issuance of such Notification. Learned Senior counsel lastly contended that the petitioners could not have any grievance as all their interests could be covered in the enquiry under Section 5A wherein they could have fully taken part and be convinced about their position. The C State Government's counsel has also very haltingly supported the respondents practically on the only ground that the interest of the petitioner could be taken care of under Section 5 A of the Act. It is on these rival claims that we have to consider the matter.

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25. It cannot indeed be disputed that the basic order is dated 01.12.06 which undoubtedly was disposed of on the compromise which also appears to have been brought about by the High Court itself. We have noted the basic features of E this compromise in paragraph 12 of our judgment. It is extremely strange that the High Court presumed that there were only two players in the field, namely, the Ichalkaranji Society and the Pride India Cooperative Textile Park. The High Court seem to have almost presumed that these two Societies alone mattered F in the whole affair and were the only two Societies which were entitled to the land to be acquired by the State Government for establishment of the industrial estate. There can be no dispute that Ichalkaranji Society was established for the purposes of developing industrial estates and that it had done so in the past. G There can also be no dispute that it had a long waiting list of about a thousand persons wanting the plots in the industrial estate for establishing industries. The question is whether it had that exclusive right. There is nothing at least brought either to the notice of the High Court or before this Court to suggest that there is any exclusivity in favour of Ichalkaranji Society. Indeed,

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in the field there were so many other Societies which were also of the same nature. At least three of them were industrial societies they being Chhatrapati Shivaji Powerloom Cooperative Society, Mahalaxmi Sahakari Audyogik Vasahat Maryadit . and Jagjivan Ram Magal Vargiya Charmakar Audyogik Sahakari Sanstha. Their status was also identical as they were registered as industrial cooperative societies as contemplated by Maharashtra Cooperative Societies Act. It is, therefore, clear that the High Court proceeded on the presumption that the only two relevant players in the field were respondent Nos. 4 and 5 herein i.e. Ichalkaranji society and Pride India Cooperative Textile Park and went on to presume that they alone had the exclusive rights of getting the lands from the Government by way of land acquisition. This, in our opinion, is a wrong presumption.

26. In the reply affidavit which has been sworn by Shri S.D. Chavan, Special Land Acquisition Officer, Kolhapur, it was specifically urged that specific queries were put to the Ichalkaranji Society vide letter dated 02.03.04 and letter dated 29.09.04 and the Manger of the Ichalkaranji Society had also attended office of the Special Land Acquisition Officer twice in relation to those queries. Those queries were not specifically met by Ichalkaranji Society. It was further pointed out in the affidavit that the land in question was earmarked in the industrial zone in the zone sanctioned Regional plan of Kolhapur-Ichalkaranji region. However, the said land had not been reserved only for the Ichalkaranji Society in the said regional plan and, therefore, the Ichalkaranji Society could not exclusively claim the same. In the said affidavit it was again denied that the proposal made by the Ichalkaranji Society was in terms of the Land Acquisition Act and in fact the Ichalkaranji Society was merely relying upon its correspondences with the Industries Department. It was further contended that Ichalkaranji Society was directed to fulfil various queries suggested by State of Maharashtra vide its letter dated 02.03.04. One of the queries was the opinion about the sanction of the Industrial Department

A of State of Maharashtra and also for the fulfilment of requirement under Section 37 (f) (vii) along with the requirement of the second proviso of Section 6 (1) of the Land Acquisition, 1894 Act i.e. about public purpose. It was pointed out further that the Cooperative Society was covered under the provisions B of Section 3 (e) of the Land Acquisition Act and was a company for the purpose of Land Acquisition Act, 1894. It was further pointed out in these queries that unless a nominal contribution by the State Government was made, the said acquisition could not be set up for the public purpose. It was also pointed out C further in the said affidavit that though the Director of Industries had asked to reserve the remaining land for the petitioner, it had nothing to do with the Collector since the land was earmarked as an industrial zone in the sanctioned regional plan of Kolhapur-Ichalkaranji region and there was no reservation of D industrial land for the petitioner in the regional plan after following the necessary procedure under Section 20 of the Maharashtra Regional and Town Planning Act, 1966. It was also pointed out that the information required under Rule 4(3) of the Land Acquisition (Company Rules), 1963 as also the E information required under Section 39 of the Land Acquisition Act was not supplied by the Ichalkaranji Society for about one year and that it was also expressed in the affidavit that the petitioner gave the impression that it was not ready to comply with the information under law and, therefore, the Collector in his order dated 30.08.05 cancelled the land acquisition F proposal.

27. It is also pointed out in the affidavit that all the concerned lands were private lands and could also be developed by their respective owners for industrial purposes. G The claim of the petitioners-Ichalkaranji Society that it was a land reserved for them alone, was specifically refuted. It is pointed out that in order to provide such a reservation in favour of Ichalkaranji Society, a Notification in the sanctioned regional plan should have been made after following the legal procedure H laid down under Section 20 of the Maharashtra Regional Town

Planning Act. Thus, it was clear that the High Court was bound to consider these grounds raised against the claim in the writ petition. The High Court, however, does not seem to have considered any of these questions.

28. It is interesting to see how the matter proceeded. On 16.11.06, the High Court passed the order that after hearing the counsel for the petitioner-Ichalkaranji Society and counsel for respondent No. 5-Pride India Cooperative Textile Park, the High Court was of the considered opinion that, at the first instance, the petitioner and the respondent No. 5 Society must arrive at a compromise in sharing the proposed land for acquisition and, thereafter, it would be appropriate for them to approach the Collector with these compromise terms reduced in writing so as to enable him to issue a Notification under Section 4 of the Land Acquisition Act, 1894.

29. The second order has been passed on 01.12.06 wherein the High Court has recorded the consent terms. The High Court has mentioned the lands covered as also the map provided wherein the lands acquired by the 5th respondent as also the land claimed by the petitioner were shown in different colours. In all these consent terms which we have seen, specifically, there is not even a stray reference to the Government or to any other private party who admittedly owned some of the lands mentioned therein. Lastly, the order came to be passed on 01.12.06 accepting the said terms. What surprises us is the apathy on the part of the High Court to decide the question raised by the Government in its reply affidavit and to point out whether the petitioner-Society could claim an exclusive right of the land acquisition along with 5th respondent when there was no reservation in its name under the provisions of Maharastra Regional and Town Planning Act. Such reservation, undoubtedly, required the procedure to be followed by Section 20, which objection was specifically raised in the affidavit by the State Government. It is on that the State Government asserted that there could not be any exclusivity in

A favour of the petitioner-Society so as to claim the compulsory acquisition in its favour. Again the High Court completely ignored the fact that this was not at least till that time an acquisition under Chapter II of the act as the Cooperative Society was nothing but a company and the necessary B condition of the contribution by the State Government was not till then fulfilled as the State Government had indeed not contributed nor had it agreed to contribute so as to give a colour that the land acquisition was for the public purpose.

C 30. On the other hand, it is very surprising that the High Court directed the State Government to issue a Notification under Section 4 ignoring the fact that no contribution was made and it suggested therein by way of sixth clause that the requirement of the government contribution would not come in the way of initiating the acquisition proceedings. The High D Court, thus, had left all the questions undecided. All this was pointed out to the High Court in subsequent petition wherein the petitioners–appellants sought the review of the order dated 01.12.06. However, that order is also clearly silent on the questions raised on the spacious ground that all the concerns E of the parties could be taken care of in the enquiry under Section 5A. In fact that was the mainstay of the argument of Shri Gupta that even if the petitioners owned the land and even if they were parties who could develop the land for the industrial purposes, yet all that could be taken care of under Section 5A F enquiry and they could be provided for the plots by the respondent No.4 Society after the land acquisition process was completed. What we fail to understand is if the direction to initiate Section 4 of the Act itself emanated in an illegal fashion whether the concerned petitioners should be put to a rigmarole G of an enquiry under Section 5A. The answer has to be negative.

31. The basic contention of the Ichalkaranji Society that it was entitled exclusively to the land acquisition in respect of all the lands in the area is incorrect in law as has been shown in the affidavit on behalf the State of Maharashtra. It is obvious H

that the State of Maharashtra proceeded to issue the Notification under Section 4 merely because of the direction of the High Court. It is quite another thing that now at this juncture the State of Maharashtra is trying to justify the land acquisition proceedings on the spacious ground that the petitioners-appellants' contentions could be considered in the Section 5A enquiry. We do not wish to go into the question as to whether the queries raised by the State of Maharashtra were justified or not. However, we must say that the High Court has not even bothered to consider the order dated 30.08.05 nor has it set it aside specifically. Following queries were made which were found not to have been complied with by the petitioner-Society. They were:

"1. For the question of land acquisition, which efforts are made by the Society for acquiring maximum proper place in the area?

2. Which efforts have been made by the Society for obtaining such lands by private transactions by giving proper compensation? As to whether those efforts are succeeded?

3. How the area proposed for the questioned proposal is proper for the object of acquisition?

4. Whether the entire area propose in question is required? Or whether the part of area therein if acquired will be sufficient?

5. Which proposal/projects the society has for using the acquired land immediately?

6. If the area under acquisition is proper for good agriculture, besides that land, whether any other appropriate land is not available for proposed acquisition?"

32. The communication thereafter mentions that the

A Ichalkaranji Society had complied with the issues raised at reference No. 3 and 4 only and since the other deficiencies have not been removed the proposal was being cancelled. Even in the earlier paragraphs the attention of the Society was drawn towards the fact that the acquisition could be done only after
B the nominal compensation of Rs. 100/-, a share of the Government towards expenses of land acquisition. It is further pointed out in the same paragraph that the Association, namely, the petitioner Society would be required to submit a guarantee in triplicate about the availabili'y of funds in the present land
C acquisition letter and it is only after this compliance that the land acquisition proceedings could be initiated. It is also pointed that the Association i.e. the petitioner-Society could be accepted only as a company and, therefore, it had to submit a report under Rule 4 (3) of the Land Acquisition Company Rules, 1963.

D 33. When we have a glance on the order of the High Court it is clear that the High Court has not considered any of these important objections. In this backdrop, it is pointed out by the learned counsel for the appellant-petitioners that they are the owners of the land and each has the capacity for developing
E the industrial estate as per the regional plan and, therefore, there was no justification in supporting the acquisition proceedings even without any compliance whatsoever by the respondent No.4 Society or treating the respondent Nos. 4 and 5 to be the only players in the field. It was pointed out that like
F respondent No.5 i.e. Pride India Cooperative Textile Park, the petitioners-appellant also owned the land and they are all industrial units. Therefore, there was nothing special with the respondent No.5, and if the estate was given to respondent No. 5 i.e. Pride India Cooperative Textile Park merely because their
G proposal was also pending, the similar direction should have been given to the others whose proposal were either pending or who were capable of making any such proposal. All that was not done and the matters were rushed on the basis of the mere compromise formula which too was suggested by the High
H Court.

34. In these circumstances, we are of the clear opinion that merely because Section 5A enquiry is pending and merely because the objection can be taken by the petitioners, the respondents by themselves will not be able to cure the illegality committed in the issuance of Section 4 Notification.

35. We deliberately do not want to go into the merits of the matter since we propose to remand these matters back to the High Court by setting aside both the orders of the High Court dated 01.12.06 and the subsequent order dated 04.04.08. The High Court will now proceed to consider both the writ petitions, namely, Civil Writ Petition No. 8967/05 and Civil Writ Petition No. 3296/07 jointly to examine the feasibility of the land acquisition in the light of objections raised by the State Government in its affidavit and to be raised by the parties for which an opportunity shall be granted to them. The appeals, thus, succeed. The matter is remanded to the High court for fresh consideration of the two writ petitions in the light of the observations made by us. The respondents 4 and 5 shall pay the costs in all the appeals.

G.N. Appeals allowed.