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ITEM No.1B Court No. 8 SECTION IX
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 2853 OF 2002

M/S. MUTHA ASSOCIATES AND ORS. Appellant (s)

VERSUS

STATE OF MAHARASHTRA AND ORS. Respondent (s)

with

C..A. Nos. 2854 OF 2002, 2855 OF 2002 AND 2856-2857 OF 2002

Date : 04/07/2013 These Petitions were called on for hearing today.

For Appellant (s) Mrs V.D. Khanna,Adv.

Mr. Krishnamurthi Swami, Adv.

Mr. Aniruddha P. Mayee, Adv.

For Respondent(s) Mr. Shivaji M. Jadhav,Adv.

Ms. J.S. Wad ,Adv
Mr. Ashish Wad, Adv.
Ms. Tamali Wad, Adv.
Ms. Kanika Bhutani, Adv.

Mr. Sanjay V.Kharde, Adv.
Ms. Asha Gopalan Nair ,Adv

Mr. Chandan Ramamurthi, Adv.

Mr. Krishnamurthi Swami, Adv.

Hon'ble Mr. Justice T.S.Thakur pronounced Judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice M.Y.Eqbal.

Civil Appeals No. 2853 of 2002, 2854 of 2002 and 2855 of 2002 are dismissed with cost assessed at Rs.

5,00,000/-. Civil Appeals No. 2856-2857 of 2002 are allowed. in terms of the signed judgment.

(Shashi Sareen) (Veena Khera)

Court Master Court Master
Signed Reportable judgment is placed on the file.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2853 OF 2002

M/s Mutha Associates & Ors. ...Appellants

Versus

State of Maharashtra & Ors. ...Respondents

With

Civil Appeal No.2854 of 2002

Pralhad Lokram Dodeja & Ors. ...Appellants

Versus

Agricultural Produce Market Committee & Ors. ...Respondents

AND

Civil Appeal No.2855 of 2002

M/s Mutha Associates & Ors. ...Appellants

Versus

State of Maharashtra & Ors. ...Respondents

AND

Civil Appeal Nos.2856-2857 of 2002

Narayan T. Rane ...Appellants

Versus

Agricultural Produce Market Committee & Ors. ...Respondents

J U D G M E N T

T.S. THAKUR, J.

1. These appeals by special leave arise out of a common Judgment and Order dated 9th April, 2001 passed by a Division Bench of the High Court of Judicature at Bombay whereby the High Court has dismissed Writ Petition No.670 of 1996 and upheld a notification dated 13th November, 1987 issued under Section 126 (2) of the MRTP Act read with Section 6 of the Land Acquisition Act and published in the Official Gazette on 3rd December, 1987. The High Court has by the same judgment and order quashed order dated 20th May, 1998 issued under Section 40 of the Land Regulation Act directing withdrawal of the acquisition proceedings, and allowed Writ Petitions No. 3620 and 3874 of 1998. Facts leading to the filing of the writ petitions and the present appeals may be summarised as under:-

2. Pune Municipal Corporation which is also the Planning Authority under the MRTP Act published a notification on 13th May, 1976 declaring its intention to revise the development plan for the Pune city and inviting suggestions and objections to the proposed revision. The Draft Revised Development Plan inter alia covered site No.M-145 comprising Survey No.559/2B admeasuring 1 hectare 20 acres (approximately) which was under the orders of Director, Town Planning shown as reserved for the extension of the APMC market yard. The Draft Development Plan published in the Official Gazette on 7th October, 1982 in terms of Section 26 of the MRTP Act clearly reflected the reservation aforementioned.

3. The Revised Development Plan was eventually sanctioned by the State Government in which the parcel of the land aforementioned owned by late Pralhad Lokram Dodeja and his brother late Bansidhar Dodeja,

appellants in Civil Appeal No.2854 of 2002 continued to be shown as reserved for APMC with the only change that instead of extension of the APMC market yard the designated purpose shown was "Bamboo Trade and Flea Market". The sanctioned Revised Development Plan further declared APMC to be the appropriate authority for acquisition and development of the said parcel of land. What is important is that although the Planning Authority had declared its intention to prepare a Revised Development Plan as early as in May 1976 and invited objections and suggestions from the public and although the Revised Draft Plan was published under Section 26 of the Act in the Official Gazette on 7th October, 1982, no objections were filed to the same by the land owners aforementioned at any point of time. It is in that backdrop that the appellant-Mutha Associates, for the first time, came on the scene on 8th March, 1984 when they acquired what was described as development rights over the disputed parcel of land upon payment of the earnest money of Rs.50,000/- only.

4. Pursuant to the sanction granted by the State Government under Section 31 of the MRTP Act, the Commissioner of Pune Division issued a declaration on 13th November, 1987 under Section 126 (2) of the MRTP Act read with Section 6 of the Land Acquisition declaring that the parcel of land aforementioned was needed for the public purpose of extension of market yard. This notification was published in the Official Gazette on 3rd December, 1987. The Special Land Acquisition Officer appointed for the purpose in due course issued notices to the owners as also to the appellant-Mutha Associates on 15th October, 1988, 31st December, 1988, 11th April, 1989 and 21st April, 1989. No objections were filed either by the owners or by Mutha Associates-their agent/Builder despite the said notices. Instead they moved two applications before the Chief Minister of the State of Maharashtra one on 11th September, 1989 and the other on 13th October, 1989 praying for deletion of the land under acquisition from reservation. The Special Land Acquisition Officer, however, went ahead with the acquisition proceedings and made an award on 9th November, 1989, pursuant whereto the respondent-APMC deposited a sum of Rs.26,29,872/- towards the cost of acquisition on 16th October, 1990. The request of the appellants for deletion of the land from acquisition proceedings was finally rejected by the Government on 5th November, 1990 thereby clearing the decks for completing the acquisition proceedings.

5. The Land Acquisition Officer accordingly issued a notice under Section 12(2) of the Land Acquisition Act for taking over the possession of the land which was received by the land owners on 24th November, 1990. The possession was scheduled to be taken over on 26th November, 1990 at which stage the land owners filed Regular Civil Suit No.2194 of 1990 before the Civil Judge, Senior Division, Pune against the State of Maharashtra and the Land Acquisition Officer challenging the award made by the Collector. In the suit the Civil Judge, Pune passed an interlocutory order directing the parties to maintain status quo which order was challenged by the defendants before the High Court in a Civil Revision that was allowed with a direction to the trial Court to decide the application for interim relief without reference to the application for appointment of a Local Commissioner made by the owners. The Civil Judge accordingly heard and dismissed the application of the owners for interim relief, aggrieved whereof the landowners filed an appeal before the High Court.

6. It was during the pendency of the said appeal that the owners and Mutha Associates filed Writ Petition No.670 of 1996 challenging the acquisition proceedings. The writ petition was entertained by the High Court on an assurance given by the appellants that the appeal filed by them against the refusal of the interim order and so also Original Suit No.2194 of 1990 shall be withdrawn by them.

7. While Writ Petition No.670 of 1996 was pending disposal, the State Government passed an order dated 20th May, 1998 whereby the Government purported to invoke their power under Section 48 of the Land Acquisition Act to direct withdrawal of the acquisition proceedings qua the land in question. Aggrieved by the said order, the APMC filed Writ Petition No.3620 of 1998 challenging the withdrawal on several grounds including the ground that the APMC was not given a hearing before the acquisition proceedings were withdrawn and that the withdrawal order was at any rate arbitrary and malafide hence unsustainable. Writ Petition No.3874 of 1998 was also filed by a few agriculturists who apprehended that the APMC may withdraw writ petition No.3620 of 1998 and, thereby, allow the withdrawal of acquisition to attain finality.

8. The High Court has, as mentioned earlier, heard and disposed of all the three writ petitions together. It has while doing so dismissed Writ Petition No.3620 of 1998 and upheld the acquisition proceedings not only on the ground that the challenge to the said proceedings was highly belated but also on the ground that there was no merit in the grounds of challenge. The High court held that the reservation for Bamboo Trade and Flea Market was in no way different from extension of the market yard - the purpose for which acquisition proceedings had been started and that both the purposes were public purposes apart from the authority designated for acquiring the land in dispute being one and the same. The High Court also relied upon a specific assertion made by the APMC that the land in question shall be used for Bamboo Trade and Flea Market only. In particular, High Court referred to Para 3 of the writ petition in which the petitioners had themselves stated as under:

> "the petitioner's thus state that the additional land was sought for by the respondent No.3 to extend the market yard to enable them to accommodate the activities of bambaoo trade which was incorporated in entries 5 and 6 under the heading No.XV forest products in the Schedule to the said Act."

9. The High Court repelled the contention that the provisions of Section 37 of the Act were applicable to the case at hand and distinguished the decisions that were relied upon by the writ petitioners-appellants in support of that contention and dismissed Writ Petition No.670 of 1996.

10. In Writ Petitions No.3620 of 1998 and 3874 of 1998 the High Court found that the withdrawal of the acquisition proceedings was not valid not only because the withdrawal notification was not published in the Official Gazette but also because the APMC-the beneficiary of the acquisition proceedings had not been given an opportunity of being heard by the Minister concerned before directing withdrawal of the said proceedings. The High Court went a step further and held that Shri Rane, the then Minister, not only acted in violation of the principles of natural justice but made one sided observations during the proceedings and used the Collector's report at the back of APMC and finally passed an order ignoring the legal provisions and the pendency of an earlier writ petition from which one could infer that the Minister had acted under the influence of Shri Mutha and directed withdrawal of the acquisition proceedings for his benefit.

11. The High Court also noted the fact that in Writ Petition No.3874 of 1998, there was a clear assertion that because of the influence of Shri Mutha the Minister-Shri Rane had moved to supersede the APMC in July, 1998 within two months of the date of withdrawal order dated 20th May, 1998. This supersession was according to the writ-petitioners aimed at ensuring that the challenge to the order of withdrawal was withdrawn by the officer who took over the reins of the APMC by withdrawing Writ Petition No.3620 of 1998. The High Court also found the supersession of APMC to be a strong circumstance that could not be brushed aside no matter Shri Rane had chosen to deny the allegations made against him. The High Court eventually concluded:

> "This clearly showed his malafides. In the circumstances, we cannot but hold that the order passed by Shri Naryan Rane, the then Revenue Minister is in gross violation of principles of natural justice, is a perverse order, without any supporting material, and is actuated by malafides and is nothing short of misuse of powers to favour the land developers. By looking to the totality of the material on record that is the conclusion which is inescapable."

12. The present appeals assail the correctness of the findings recorded by the High Court, not only, insofar as the same deal with the validity of the acquisition proceedings, but also, insofar as the High Court has held the withdrawal of the acquisition proceedings to be bad on account of non-publication of the withdrawal notification, the non-observance of principles of natural justice and the malafide exercise of power vested in the Minister under Section 48 of the Land Acquisition Act.

13. We may before adverting to the submissions made at the bar, first deal with a matter of some significance especially because, the appeals have abated on account of the death of the owners-appellants 2 & 3 as no

application for substitution of the legal representatives was moved by the appellant-Mutha Associates or the legal heirs of the deceased appellants. Interlocutory Application No.6 filed after considerable delay, however, seeks condonation of delay, setting aside of abatement and for substitution of the legal heirs in place of the deceased appellants. This application has been stoutly opposed by the respondents who have filed objections asserting inter alia that the application does not, explain the inordinate delay nor does it show that the applicants or even Mutha Associates acted diligently in the matter. The opposition is not without basis. We say so because appellant No.2-Pralhad Lokhram Dodeja died on 3rd December, 2006, while appellant No.3-Bansidhar Lokram Dodeja passed away much earlier on 22.11.2003. Interlocutory Application No.6 seeking condonation, setting aside of abatement and substitution was, however, filed only on 14th October, 2011 which implied that there is a delay of nearly five years in the filing of the application qua Appellant No.2 and nearly eight years qua appellant No.3. Keeping in view the limitation prescribed for making such an application, the delay is inordinate to say the least. There is no explanation worth the name, leave alone a cogent one for the said delay. It is not the case of the legal heirs of the deceased that they were unaware of the pendency of the appeal in which their predecessors in interest were appellants. It is also not the case of Appellant No.1-Mutha Associates that it was unaware of the death of the two appellants from whom it had acquired development rights and a power of attorney. No such plea could even otherwise be taken by appellant-Mutha Associates, having regard to the fact that in the reply to the contempt petition filed on its behalf a specific, averment had been made by the respondents that both appellants 2 and 3 had passed away. As a matter of fact in paras 6 and 7 of the Interlocutory Application No.6, the appellant Mutha Associates has clearly admitted this fact, in the following words:

> "6.The Appellant/Petitioner No.1 further states that Appellant/Petitioner No.2 and Appellant/Petitioner No.3 died during the pendency of the Appeal on 3rd December, 2006 and 22nd November, 2003 respectively. The Appellant/Petitioner No.1 states that it is true that the Respondents had mentioned about the death of original Appellants Nos.2 and 3 in their affidavit-in-reply filed in August 2010 in this Hon'ble court in Contempt Petition No.108 of 2010 in Civil Appeal No.2853 of 2002.
> 7. The Appellant/Petitioner No.1 however states that the Appellants/Petitioner No.1inadvertently missed this aspect, which was taken in the contempt proceedings. Thus, steps could not be taken for substitution immediately thereafter."

14. The above does not constitute a reasonably acceptable explanation for the inaction and resultant delay on the part of the legal representatives of the deceased appellants or Mutha Associates. The ipxit dixit of the appellant Mutha Associates cannot be accepted as a ground for condoning delay that spreads over years and implies complete indolence and lack of diligence on its part. So also the absence any worthwhile reason for the failure of the legal heirs to come forward and apply for substitution disentitles them to any relief by way of condonation, setting aside abatement and substitution. The fact that Mutha Associates has during the pendency of the proceedings in this Court allegedly acquired 37.5% share in the property by way of sale in their favour from persons who never came forward to challenge the acquisition proceedings at any stage and who remained content and in complete oblivion makes little difference. Any such acquisition pendente lite and after the land stood vested in the APMC needs to be noticed only to be ignored. The alleged acquisition on the contrary casts a cloud over the bonafides of Mutha Associates who came to the Court for relief on the basis of a power of attorney executed in its favour by the owners and a development agreement that did not by itself clothe it with the locus standi to assail the acquisition independent of the owners but now seeks to improve its case by setting up an acquisition post the preliminary notification. Suffice it to say that Interlocutory Application No.6 deserve to be and is hereby dismissed as without merit and Appeals No.2853/2002, 2854/2002, 2855/2002 and 2856-2857/2002 filed by the appellant owners and Mutha Associates in its capacity as an attorney/agent as having abated.

15. Having said that we do not intend to neglect the contentions that

were urged on merits at considerable length by learned counsel for the parties. The challenge to the acquisition proceedings was, as seen earlier, negatived by the High Court not only on the ground of unexplained delay and laches but also on merits. The High Court was in our opinion perfectly justified in doing so. The challenge to the acquisition proceedings was indeed highly belated having regard to the fact that Planning Authority had declared its intention to revise the development plan for Pune city, and invited objections to the proposal as early as in May, 1976. The Special Officer authorized by the Government to discharge the functions of the Planning Authority then issued a notification under Section 26(1) of the MRTP Act publishing the Revised Development Plan and inviting objections in September, 1982. It is also not disputed that the land in question was reserved in the Revised Development Plan for extension of Market Yard and the Appropriate Authority for acquisition of the same was shown to be the APMC. The land owners did not file any objections to the proposed reservation of their land in the Revised Development Plan. In April 1984 the Special Officer submitted a revised development Plan under Section 28 of the MRTP Act for approval. The draft plan was sanctioned and published in the official gazette on 29th January, 1987 in which the land in question continued to be reserved though the designated purpose was shown to be "Bamboo Trade and Flea Market". The process for acquisition of the land was then started under Section 126(2) of the MRTP Act read with Section 6 of the Land Acquisition Act. This declaration was made on 13th November, 1987. Not only that, specific notices were sent to the land owners as well as to M/s Mutha Associates Developers on different dates of hearing. Despite the publication and the service of notices no objections were filed by the land owners or M/s Mutha Associates Developers. In the absence of any objections or opposition to the proposed acquisition the Land Acquisition Officer was free to make an award which he did on 9th November, 1989. It was only after the Collector (Land Acquisition) initiated the proceedings for taking over the possession of the land in question that the land owners filed a civil suit in which they challenged the award made by the Collector without raising any question regarding the validity of the declaration made under Section 126(2) of the MRTP Act read with Section 6 of the Land Acquisition Act. That suit remained pending for nearly six years before the same was withdrawn to challenge the acquisition proceedings in Writ Petition No.670 of 1996 filed before the High Court. This challenge was on the face of it barred by inordinate delay and laches. The High Court was fully justified in declining to interfere with the acquisition proceedings on that ground. The High Court while doing so, rightly observed:

> "That apart, the gross delay and laches are most fatal to this petition. The planning process started in the year 1976. The draft development plan dated 18.9.1982 was published on 7th October, 1982 under which this particular parcel of land was reserved in favour of one APMC for extension of market yard. It was permissible to the petitioners to lodge their objections under Section 28 of the MRTP Act. Subsequently the plan was sanctioned and published in the official gazette on 29.1.1987 though with one change that the designated purpose was to be bamboo trade and flea market. Thereafter when the process of acquisition started, the declaration under Section 126(2) of the MRTP Act read with Section 6 of the Land Acquisition Act was made on 13th of November 1987. Not only that but specific notices to the land owners as well as developers were issued on 15.10.1988 and 31.12.1988. On 15.10.1988 it was submitted by the first two petitioners that they needed time in view of the death of their father on 13.10.1988 and hence on their request the proceedings for acquisition were adjourned to 14.11.1988 on 14.11.1988 no claim was filed and yet by the notice dated 31.12.1988 the proceedings were further adjourned and the time to file the claim was extended to 5.1.1989. On coming to know that M/s Mutha Associates had an interest in the land a specific notice was given to Shri Shantilal Mutha of M/s. Mutha Associates on 11.4.1989 to lodge the claim if any by 19.4.1989. Again, on the application given by Mutha Associates dated 19.4.1989, the Land Acquisition Officer adjourned the proceedings on 21.4.1989 and recorded it by his letter of that date of M/s. Mutha Associates. Thus the land owners and the

land developers were fully aware of these proceedings and participated therein by filing the application seeking time but without lodging any claim or filing any submissions or objections. It was in these circumstances that the Land Acquisition Officer ultimately proceeded to make his Award on 9.11.1989.

Now, as can be seen from the above, instead of filing their objections before the Land Acquisition Officer, who has the authority to consider them, the petitioners preferred to directly communicate the same to the then Chief Minister. The then Chief Minister also rejected their representation in November 1990. The petitioners did not choose to challenge that decision as well. It is only when the Land Acquisition Officer issued a notice for taking possession of the land that the petitioners rushed to the Civil Court wherein they sought to challenge the Award and an order of status quo came to be passed on 25.11.1990. As rightly pointed out by Mr. Sanghavi, in the civil suit the notice under section 126(2) of the MRTP Act read with section 6 of the Acquisition Act has not been challenged. It has been challenged for the first time in this writ petition which was filed on buth (sic) of January 1996 and it is now being contended that there is a departure from the designated purpose in the acquisition proceedings and also that the APMC did not have the capacity to deal in the particular items. The submission that the APMC had large parcel of un-utilized land and therefore it did not need the land could certainly have been made when revised draft development plan was published in the official gazette on 7.10.1982. It is at that stage that the petitioners were expected to lodge their objections to the reservation. After the plan was sanctioned and became final the acquisition proceedings were initiated. The declaration under section 126(2) of the MRTP Act read with Section 6 of the Acquisition Act was made on 13.1.1987. Thereafter specific notices under section 9 of the Acquisition Act were given to the land owners as well as to the developers. They participates in the proceedings by filing applications for adjournment and yet no objections were lodged before the Acquisition Officer. Thus the Acquisition Officer was left with no alternative but to finalise the proceedings which he did by passing the Award of 9.11.1989. The representation made to the State Government was rejected in November 1990 but that was also not challenged. In the suit filed on 25.11.1990 no challenge was raised to the notice under section 126(2) read with Section 6. That was raised for the first time in the present writ petition filed in January 1996."

16. The legal position, as to the approach which a writ Court must adopt while examining the validity of acquisition proceedings, is settled by a long line of decisions rendered by this Court from time to time. It is not necessary to burden this judgment by referring to all those decisions, for the proposition of law is so well settled that it hardly bears repetition. We may simply refer to the Constitution Bench decision of this Court in Aflatoon and Ors. v. Lt. Governor of Delhi and Ors. (1975) 4 SCC 285 where this Court was dealing with a case in which the land owners had not approached the Court after the declaration under Section 6 of the Land Acquisition Act was issued by the Collector. It was only after notices under Section 9 of the Act were issued that the owners had come forward to urge that there was no public purpose supporting the proposed acquisition. This Court held that a valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. The owners were not, therefore, justified in sitting on the fence and allowing the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and declaration under Section 6 were valid and then to attack the notification on grounds that were available to them at the time when the notification was published. The following passage is instructive in this regard:

"There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for

challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attach the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners. (see Tilokchand Motichand v. H.B. Munshi, (1969) 1 SCC 110, and Rabindranath Bose v. Union of India, (1970) 1 SCC 84)".

17. The position is no different in the instant case. The appellant owners or Mutha Associates Builders did not file any objections or move their little finger till the making of the award by the Collector. Instead of filing of the objections, opposing the proposed acquisition before the Collector and seeking redress at the appropriate stage they remained content with making representations to the minister which was not a remedy recognised by the statute. It was only after the Collector had made his award and after notice for taking over possession was issued by the appellants that they rushed to the civil court with a suit in which too they did not assail the validity of the declaration under Section 26(2) of the MRTP Act read with Section 6 of the Land Acquisition Act. The remedy by way of a suit was clearly misconceived as indeed this Court declared it to be so in State of Bihar v. Dhirendra Kumar and Ors. (1995) 4 SCC 229. The appellants could and ought to have challenged the acquisition proceedings without any loss of time. Having failed to do so, they were not entitled to claim any relief in the extraordinary jurisdiction exercised by the High Court under Article 226 of the Constitution.

18. The view taken by the Constitution Bench in Aflatoon case (supra) has been reiterated by another Constitution Bench decision in Indrapuri Griha Nirman Sahakari Samiti Ltd. v. The State of Rajasthan and Ors. (1973) 4 SCC 296. To the same effect are the decisions of this Court in Municipal Corporation of Greater Bombay v. I.D.I. Co. Pvt. Ltd. and Ors. (1996) 11 SCC 501, Ramjas Foundation and Ors. v. Union of India and Ors. 1993 Supp(2) SCC 20 and Larsen & Toubro Ltd. v. State of Gujarat & Ors. (1998) 4 SCC 387. The common thread that runs through all these decisions is that in order to succeed in a challenge to the acquisition proceedings the interested person must remain vigilant and watchful. If instead of doing so, the interested person allows grass to grow under his feet he cannot invoke the powers of judicial review exercisable under Article 226 of the Constitution. The failure of the interested persons to seek redress at the appropriate stage and without undue delay would in such cases give rise to an inference that they have waived of their objections to the acquisitions. The bottom line is that the High Court can legitimately decline to invoke their powers of judicial review to interfere with the acquisition proceedings under Article 226 of the Constitution if the challenge to such proceedings is belated and the explanation offered a mere moon shine as is the position in the case at hand. The High Court has in the fact situation of this case rightly exercised its discretion in refusing to interfere with the acquisition proceedings.

19. Delay and laches apart, the High Court has even on merits found that the challenge to the acquisition proceedings was unfounded. The challenge as noticed earlier was primarily on the ground that on the date of the initiation of the acquisition proceedings the APMC was not entitled to regulate the 'bamboo trade' and since land in question was reserved for bamboo trade in flea market, any acquisition for a purpose beyond the regulatory powers of the APMC could not be made a basis for such acquisition.

20. The proposed acquisition, it is not in dispute, was notified with a view to extending the APMC market yard. This extension was, according to the APMC, meant to enable it to use the acquired area for not only regulating bamboo trade but also a flea market. That being so, it is difficult to see how the purpose indicated in the declaration was in any way different from the purpose for which the area was reserved. The High

Court has, in our opinion, correctly held that both the purposes were public purposes and that APMC had repeatedly asserted that the acquisition will eventually lead to the use of the acquired area for the purpose for which the same was reserved namely, bamboo trade and flea market. The fact that the bamboo trade was on the date of the declaration not legally open for regulatory control of the APMC would not make any material difference having regard to the fact that flea market was at any rate permissible at all points of time for there was no legal or other impediment in the APMC regulating a flea market in its market yard. The restrictions on the bamboo trade were also removed on account of vacation of stay granted by the Government. The result was that as on the date of the judgment delivered by the High Court, the APMC was and continues to be free to regulate bamboo trade also. Suffice it to say that the High Court has correctly analysed the issue and rightly held that there is no dichotomy between the purpose notified and the purpose for which the reservation was made. There is, in our opinion, no flaw in the reasoning of the High Court insofar it upheld the validity of the acquisition proceedings even on merits.

21. That brings us to Writ Petitions No.3620 and 3874 of 1998 filed by the respondent-APMC challenging order dated 20th May, 1998 passed by Shri Narayan Rane, the then Minister of Revenue, Government of Maharashtra, directing deletion of the disputed land from acquisition. The High Court has quashed the order passed by the Minister on the ground that APMC-the beneficiary of the acquisition was not given a fair hearing by the Minister before directing the withdrawal of the acquisition proceedings. Such a hearing was, observed the High Court, essential having regard to the nature of the power exercised by the State Government under Section 48 of the Land Acquisition Act and the decisions rendered by this Court while interpreting the said provision. The High Court has, further, held that the decision was vitiated as the exercise of power by the Minister was not only arbitrary but malafide also. The High Court declared that a withdrawal that is not notified in the official Gazette was ineffective and non-est in the eye of law.

22. The appellants have assailed these findings before us and argued that the requirement of a hearing to the beneficiary before withdrawal of the acquisition proceedings was not predicated by Section 48 of the Act. A hearing was at any rate provided to the beneficiary that satisfied any such requirement. It was also contended that the High Court was wrong in holding that the exercise of the power available under Section 48 was malafide.

23. We may first deal with the question whether withdrawal of acquisition must be notified in terms of Section 48 of the Land Acquisition Act. The question is, in our view, no longer res integra in the light of the decisions of this Court in State of Maharashtra v. Umashankar Rajabhau (1996) 1 SCC 299 and M/s. Larsen and Tourbo Ltd. v. State of Gujarat & Ors. (1998) 4 SCC 387.

24. In the former case this Court while dealing with the issue of publication of notification of withdrawal under Section 48 (1) observed:

> "So long as there is no notification published under Section 48 (1) of the Act withdrawing from acquisition, the court cannot take notice of any subsequent disinclination on the part of the beneficiary"

25. In the case of M/s. Larsen and Tourbo Ltd. (supra), a specific submission was made on behalf of the State that Section 48 of the Land Acquisition Act did not provide for publication of a notification regarding the withdrawal of the acquisition proceedings unlike Sections 4 and 6 of the Act which require such a publication. This Court, however, repelled the contention and observed:

> "We do not think that Mr. Salve is quite right in his submissions. When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely by rescinding those notifications. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due for any damage suffered by owner during the course of acquisition proceedings is determined and given to him. It is, therefore, implicit that withdrawal from acquisition has to be notified. Principles of law are, therefore, well settled. A notification

in the official Gazette is required to be issued if the State Government decides to withdraw from the acquisition under Section 48 of the Act of any land of which possession has not been taken."

26. The High Court was also right in relying upon a Division Bench decision of that Court in Prakash Vasudev Deodhar and Ors. v. State of Maharashtra and Ors. 1993 MLJ page 1768 where similar issue arose for consideration of the Court and was answered by holding that a publication under Section 48 was necessary specially when the withdrawal case publication of notifications issued under Sections 4 and 6 of the Act in the official Gazette. There was admittedly no such publication in the instant case which rendered the withdrawal order non-est in the eyes of law.

27. Coming then to the question whether the exercise of power under Section 48 of the Land Acquisition Act required compliance with the principles of natural justice and consequently a hearing to the beneficiary affected by such withdrawal, we must at the threshold say that such a requirement is not in specific words incorporated in Section 48 of the Act. That does not, however, make any material difference because the law is well-settled that if a statutory provision could be read consistently with the principles of natural justice, the Courts would prefer do so. That is because it can be presumed that the legislature and the statutory authorities intend to act in accordance with such principles. In case, however, the statutory provisions either specifically or by necessary implication exclude the application of the principles of natural justice, the Court cannot ignore the mandate of the legislature and read into any such provision the principles of natural justice.

28. We may in this regard refer to the following passage from the decision of this Court in Union of India v. Col. J.N. Sinha (1970) 2 SCC 458:

"... It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislature and the statutory authorities intend to act in accordance with the principles of natural justice. But it on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read in to the concerned provision the principles of natural justice."

29. In Para 33 of the above decision, this Court specifically noticed the contention that the right of hearing of a beneficiary was limited to acquisitions for companies under Part VII of the Act and repelled the same in following words:

"The decision in Larsen and Toubro (1998 AIR SCW 1351 : AIR 1998 SC1608) which relied upon an earlier decision in Amarnath Ashram Trust Society v. Governor of U.P. (1998 AIR SCW 59: AIR 1998 SC 477) (supra) to hold that a beneficiary has a right to be heard before a notification under Section 48(1) is issued, does not appear to be limited to acquisition for companies under Part VII of the Act as is contended by the respondents although the acquisition in that case had been made for a company for the purpose of setting up a housing colony. Both cases have also drawn a distinction between the rights of an owner and the beneficiary of the acquisition to object to withdrawal from the acquisition for the reasons noted earlier."

30. Was a proper hearing given to the APMC-the beneficiary in the instant case, is the other aspect that needs to be considered at this stage. The High Court has examined that aspect and concluded that the hearing was no more than an eye wash. The High Court observed:

"From the narration as above, it is very clear that the APMC was called for a hearing before the Minister only as a

formality. It was not given any notice to show cause communicating the reasons for withdrawal. A copy of the land-owners representation dated 12th November 1997 which was the basis of that proceeding was admittedly not made by them that the matter may not be proceeded since writ petition No.670 of 1995 was pending in the High Court was turned down and the Minister proceeded complete the nearing on the very date. Although the hearing was concluded on that date, the Minister took into consideration the report of the Collector received much thereafter and which has been made the basis of the impugned order passed on 20th May, 1998 and admittedly a copy on that report has not been given to APMC. Thus the beneficiary was not furnished in writing the grounds on which the action of withdrawal was proposed, the matter was proceeded there and then on the returnable date in a hurry and on the top of it the Minister took into consideration as the relevant factor some material behind the back of the aggrieved party, something he could not take into account since the hearing had already been concluded. It is true that the proceeding under Section 48 is an administrative proceeding, but it is a proceeding wherein the valuable rights of the beneficiary are at stake. The hearing to be afforded to the beneficiary is not expected to be and empty formality. The emphasis on affording this opportunity of being heard led by the apex Court in the above referred judgments is to make it a meaningful exercise. The manner in which the Minister has proceeded with the enquiry leaves us in no doubt that he has proceeded in gross violation of the principles of natural justice."

31. There is, in our view, no flaw in the above reasoning and conclusion leave alone any perversity to call for our interference. The obligation to hear existed but was not satisfactorily discharged by the Minister while taking a decision in the matter, which is by itself sufficient to vitiate the action taken by him independent of the fact that any order directing withdrawal of acquisition ought to have culminated into a proper notification and published in the official Gazette.

32. The High Court next examined the correctness of the reasons given in the order of withdrawal passed by the Minister and found that the same were wholly unsustainable. The Minister had cited two distinct reasons for directing withdrawal of the order. One of the reasons was that the APMC was not authorised to deal in bamboo and fire wood from 1977 till 1995 and that even though notification dated 6th February, 1995 included bamboo and fire wood in the coverage of the APMC, the implementation of the said order had been stayed by the State Government on 20th June, 1995. The Land Acquisition Officer could not have in the light of the said stay acquired the land for a purpose which the beneficiary could not ostensibly pursue.

33. The High Court found that the stay granted by the State Government stood vacated on 18th February, 1997 and a specific mention of this fact was made in para 6 of the representation of the APMC filed before the Minister. Not only that a copy of the notification vacating the stay against bamboo trade was enclosed as item No.9 of the supporting document and enclosed with the representation and was on the file of the minister. Even the developer on whose representation the withdrawal was ordered had in the written argument submitted before the Minister conceded that the stay granted by the State Government had been vacated. Ignoring these facts the Minister appears to have taken a stance that was contrary to the admitted position on record; implying complete non-application of mind on his part. The High Court has come down heavily on the order passed by the Minister especially because the latter had at his disposal the assistance of the departmental officers.

34. The other reason given for withdrawal of the acquisition proceedings was that the APMC has used land otherwise available to it for activities like a beer bar, a hotel and a restaurant. The High Court found that the representation of the developers and owners made no such reference to any such activity. The High Court noted that except averments in para 17 of the written argument, no other material was placed before the Minister at the hearing which could possibly justify the Minister’s oral observations made in the course of hearing regarding mis-utilisation of the

land or justify the withdrawal of the acquisition proceedings. The High Court also found fault with the Minister making use of the report received from the Collector after the closure of the hearing and behind the back of the APMC without any notice or opportunity to it to file objections to the same.

35. The APMC, it is noteworthy, sought to justify the facilities of a hotel and a restaurant and ancillary services without which heavy turnover of business and economic activity as was being seen and managed by the APMC was not possible. The High Court found that the market yard was spread over 153 acres with more than 2000 shops visited by more than 50,000 visitors every day. Facilities of hotels and restaurants was, therefore, necessary observed the High Court. The Minister, however, failed to appreciate all this and even failed to notice the Collector's report which categorically stated that the permission for running the beer bar had been cancelled against which the aggrieved party had approached the High Court.

36. The High Court was, in our opinion, perfectly justified in holding that the order passed by the Minister lacked objectivity and was hasty without due and proper consideration of the relevant circumstances and the material on record. There is, in our view, no infirmity in the said findings nor was any serious attempt made before us by learned counsel for the appellants to demonstrate that the Minister had indeed acted in a fair objective and dispassionate manner while directing the withdrawal of the acquisition proceedings on the twin grounds that have been scrutinised by the High Court and rightly found to be untenable. We are satisfied that the order passed by the Minister directing withdrawal of the acquisition proceedings was bad not only because it was arbitrary, lacked objectivity and ignored the material on record but also because the said order was passed without offering to the APMC a fair and reasonable opportunity of being heard in the matter. That the order was not notified was only an additional reason that rendered the order legally unsupportable which the High Court rightly quashed.

37. That leaves us with only other question argued by Mr. V.A. Bobde at considerable length in Civil Appeals No.2856 and 2857 of 2002 filed by Mr. Narayan Rane, the then Revenue Minister. The High Court has, as noticed earlier, held the action of the Minister to be actuated by malafides. Inasmuch as the Minister, passed an order without affording a fair hearing to APMC the beneficiary of the acquisition and on grounds that were untenable, the Minister did so under the influence of the Mutha Associates, the builder observed the High Court. The High Court's reasoning for that conclusion is in the following words:

> "89. The aforesaid narration makes a sad reading. We have a Minister of Revenue who does not consider the material placed before him, but considers the information which has come on record subsequent to the conclusion of hearing. He has courage to state on affidavit that though the hearing concluded on 5.1.1988, he passed the order after a substantial period on 20th May, 1988 and after taking into consideration the record available before the Government and the letter/report of the collector dated 16th March, 1998. We have a Minister who was making observations during the proceeding that the concerned land was being mis-utilized thought there was no material whatsoever except the reference to such allegation in another writ petition to which a reference was made in the written arguments of the land-owners. Thus we have a Minister who has no regard for the principles of natural justice or fair play or else he would not have passed the kind or order which he has passed. Why he should do this except for the reasons alleged in the petition namely the influence exercised by Shri Mutha who has just put in the earnest money of Rs.50,000/- to claim a large of plot of Hector and 34 Areas in the prime area of the city for which the compensation under the ward of 1989 was over Rs.26 Lakhs? This is obviously to favour the land developers. It shows that the Minister does not have any concern for the planning process where under a number of authorities apply their mind and thereafter reserve the land according to the requirements of the society. The Minister does not seem to have any regard for the judicial process also inasmuch as although the writ petition was pending in this Court concerning the very

controversy, for the benefit of the land-developers he has tried to overreach the judicial process. Last but not the least he does not seem to have any concern for the weaker sections of the Society like the Burud Community for whom the plot was reserved. Obviously the land developer was more relevant for the Minister than APMC or these people who are on the fringe of the Society and that must be for the reasons best known to the Minister."

38. It was contended by Mr. Bobde that the High Court went wrong in attributing motives to the Minister without there being any specific charge, material or particulars to support the same. The mere fact that an order passed by a constitutional or statutory authority was found to be legally unsustainable did not ipso facto mean that the order was malafide in that the authority had passed the same for any extraneous or other consideration. Reliance in support was placed by Mr. Bobde upon a series of decisions of this Court, in which the need for the Court examining a charge of malafides to be circumspect and the standard of proof required for holding the charge proved have been laid down. The case at hand did not argue Mr. Bobde, satisfy the said requirements and standards, rendering the order passed by the High Court unsustainable.

39. The law regarding pleading and proof of 'malice in fact' or malafides as it is in common parlance described is indeed settled by a long line of decisions of this Court. The decisions broadly recognise the requirement of allegations suggesting "malice in fact" to be specific and supported by necessary particulars. Vague and general averments to the effect that the action under review was taken malafide would not therefore suffice. Equally well settled is the principle that the burden to establish that the action under challenge was indeed malafide rests heavily upon the person making the charge; which is taken as quasi criminal in nature and can lead to adverse consequence for the person who is proved to have acted malafide. There is in fact a presumption that the public authority acted bonafide and in good faith. That presumption can no doubt be rebutted by the person making the change but only on cogent and satisfactory proof whether direct or circumstantial or on admitted facts that may support an inference that the action lacked bonafides and was for that reason vitiated. The third principle equally sanctified by judicial pronouncements is that the person against whom the charge is made must be impleaded as a party to the proceedings and given an opportunity to refute the charge against him. We may at this stage refer to a few decisions to illustrate the above for a copious reference to all the pronouncements is unnecessary and can be avoided.

40. In State of Bihar v. P.P. Sharma 1992 Supp. (1) SCC 222, this Court explained the juristic significance of malafides and the questions that need to be determined while examining plea based on malafides. The following passage is apposite in this regard:

"50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such

considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand."

41. That the allegations of malafides would require a high degree of proof to rebut the presumption that administrative action has been taken bonafide was laid down as one of the principles governing burden of proof of allegations of malafides levelled by an aggrieved party. The Court in that decision observed thus:

"..... It is well settled that the burden of proving mala fide is on the person making the allegations and the burden is "very heavy". (vide E.P. Royappa v. State of T.N. (1974) 4 SCC 3). There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer, J. stated in Gulam Mustafa v. State of Maharashtra (1976) 1 SCC 800 (SCC p.802, para 2): "It (mala fide) is the last refuge of a losing litigant."

42. In State of M.P. and Ors. v. Nandlal Jaiswal and Ors. (1986) 4 SCC 566, this Court laid emphasis on the need for furnishing full particulars of allegations suggesting malafides. The use of words such as "malafides", "corruption" and "corrupt practice" was held to be insufficient to necessitate an enquiry into such allegations. The Court observed:

"39. Before we part with this case we must express our strong disapproval of the observations made by B.M. Lal, J. in para 1, 9, 17, 18, 19 and 34 of his concurring opinion. The learned Judge made sweeping observations attributing mala fides, corruption and underhand dealing to the State Government. These observations are in our opinion not at all justified by the record. In the first place it is difficult to appreciate how any such observation could be made by the learned Judge without any foundation for the same being laid in the pleadings. It is true that in the writ petitions the petitioners used words such as "mala fide", "corruption" and "corrupt practice" but the use of such words is not enough. What is necessary is to give full particulars of such allegations and to set out the material facts specifying the particular person against whom such allegations are made so that he may have an opportunity of controverting such allegations. The requirement of law is not satisfied insofar as the pleadings in the present case are concerned and in the absence of necessary particulars and material facts, we fail to see how the learned Judge could come to a finding that the State Government was guilty of factual mala fides, corruption and underhand dealing."

43. To the same effect is the decision of this Court in Smt. Swaran Lata v. Union of India & Ors. (1979) 3 SCC 165, the Court held that in the absence of particulars, the Court would be justified in refusing to conduct an investigation into the allegations of malafides.

44. In Minor A Paeeiakaruppan v. Sobha Joseph (1971) 1 SCC 38, this Court held that even when the Court examining the validity of an action may find a circumstance to be disturbing it cannot uphold the plea of malafides on ground of mere probabilities. A note of caution was similarly sounded by this Court in E.P. Royappa v. State of T.N. (1974) 4 SCC 3, where the Court held that it ought to be slow to draw dubious inferences from incomplete facts particularly when imputations are grave and they are made against the holder of an office which has high responsibility in the administration. The following passage from the decision is apposite:

"92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up-these considerations are wholly irrelevant in judicial approach-but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that we must assess the merits of the allegations of mala fides made by the petitioner against the second respondent."

45. The charge of malafides levelled against the appellant-Mr. Rane, the then Minister was not supported by any particulars. The writ petition filed by APMC did not provide specific particulars or details of how the decision taken by minister was influenced by Mutha Associates or by any other person for that matter. The averments made in the writ petition in that regard appeared to be general and inferential in nature. Such allegations were, in our opinion, insufficient to hold the charge of 'malice in fact' levelled against the minister proved.

46. It is true that the High Court has enumerated certain stark irregularities in the decision making process or the use of material obtained on behalf of the back of the beneficiary of the acquisition as also the denial of fair opportunity to the beneficiary to present its case before the minister yet those irregularities do not inevitably lead to the conclusion that the minister had acted malafide. Failure to abide by the principles of natural justice are consideration of material not disclose to a party or non-application of mind, to the material available on record may vitiate the decision taken by the authority concerned and may even constitute malice in law but the action may still remain bonafide and in good faith. It is trite that every action taken by a public authority even found untenable cannot be dubbed as malafide simply because it has fallen short of the legal standards and requirements for an action may continue to be bonafide and in good faith no matter the public authority passing the order has committed mistakes or irregularities in procedures or even breached the minimal requirements of the principles of natural justice. The High Court has attributed to the Minister appellant in Civil Appeals No.2856-2857 of 2002, malafides simply because the order passed by him was found to be untenable in law. Such an inference was not in our view justified, no matter the circumstances enumerated by the High Court may have given rise to a strong suspicion that the minister acted out of extraneous considerations. Suspicion, however, strong cannot be proof of the charge of malafide. It is only on clear proof of high degree that the court could strike down an action on the ground of malafide which standard of proof was not, in our opinion, satisfied in the instant case. To the extent the High Court held the action of the minister to be malafide, the

impugned order would require correction and Civil Appeals No.2856 and 2857 of 2002 allowed.

47. In the result we dismiss Civil Appeals No.2853/2002, 2854/2002 and 2855/2002 with cost assessed at Rs.5,00,000/- to be paid by appellant No.1-Mutha Associates to the beneficiary of the acquisition-APMC, Pune. We, however, allow Civil Appeals No.2856 and 2857 of 2002 filed by Shri Narayan Rane to the extent that the finding recorded by the High Court regarding malafides against the appellant in that case is reversed and the judgment and order passed by the High Court accordingly modified.

.....J.
(T.S. THAKUR)

.....J.
(M.Y. EQBAL)

New Delhi
July 4, 2013