**HIGH COURT OF GUJARAT (*D.B.*)**

**JORUBHA RAGHAJI & ORS**
***Versus***
**STATE OF GUJARAT & ORS**

**Date of Decision:** 23 August 2005

**Citation:** 2005 LawSuit(Guj) 846

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**Hon'ble Judges:** J M Panchal, H B Antani

**Eq. Citations:** 2005 4 GLR 3588

**Case Type:** Special Civil Application

**Case No:** 521 of 2003

**Subject:** Civil, Constitution, Property

**Editor's Note:**
**Land Acquisition Act, 1894 - Sec 4, 6, 40 - Land Acquisition (Companies) Rules, 1963 - Rule 4 - Acquition proceedings - Inquiry under Rule 4 was conducted by competent authority - Necessary report was forwarded to the Collector and there after to State Government - Pursuant to the direction given by Deputy Collector the Talati - Cum - Mantri had effected substituted service of notice on deceased and other in presence of such Panch witness - Petitioner have failed to point out as to which prejudice was caused to them by non-service of notice of inquiry which was held under Rule 4 of Rules Court finds that the petitioners did not approach Court immediately after Publication of declaration under Sec 6 of the Act - Delay caused in filing petition is not explained by petitioner - The word workmen' used in Sec 40(1) (a) of Acquisition Act is both general and comprehensive and therefore it should receive its full and natural meaning - Prevision of Sec 40(1)(a) of the Act would be attracted to the facts of the case - Acquisition of land can not be set aside on the ground that it is for the officer of company but not for workmen employed by company - Held , No Substance in this petition.**

**Acts Referred:**
Constitution Of India Art 226
Evidence Act, 1872 Sec 74
Land Acquisition Act, 1894 Sec 4(1), Sec 14, Sec 22, Sec 38A, Sec 6, Sec 44A, Sec 19,

Sec 39, Sec 41, Sec 34, Sec 13, Sec 16, Sec 28, Sec 21, Sec 32, Sec 15, Sec 20, Sec 23, Sec 29, Sec 40(1)(a), Sec 9, Sec 40, Sec 30, Sec 37, Sec 55, Sec 26, Sec 5A, Sec 35, Sec 10, Sec 17, Sec 7, Sec 5, Sec 27, Sec 8, Sec 42, Sec 33, Sec 36, Sec 31, Sec 11, Sec 5A(2), Sec 18, Sec 25, Sec 4, Sec 12, Sec 44B, Sec 24
Gujarat High Court Rules, 1993 R 26
Land Acquisition (Companies) Rules, 1963 R 4(1), R 4(2)(1), R 5, R 4

**Final Decision:** Petition dismissed

**Advocates:** B P Munshi, K S Nanavati, Nanavati Associates, S N Shelat

**Cases Referred in (+): 18**

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**J. M. Panchal, J.**

**[1]** By filing instant petition under Article 226 of the Constitution, the petitioners, who are heirs and legal representatives of deceased Raghaji Balubha, have prayed to issue writ of mandamus or writ or order in the nature of mandamus or any other appropriate writ, order or direction to quash notification dated May 14, 2001 issued under Section 4 of the Land Acquisition Act, 1894 ("the Act" for short) as well as declaration dated April 9, 2002 made under Section 6 of the Act, for acquiring lands bearing Survey Nos.572, 573 and 574 belonging to them and situate at Village Moti Khavdi, Taluka & District: Jamnagar. The petitioners have further prayed to declare that acquisition proceedings for acquiring abovereferredto lands for the purpose of respondent No.4-company, are unconstitutional, illegal, against the mandatory Rules and bad in law.

**[2]** Deceased Raghaji Balubha, a resident of Village Gagva, Taluka & District:Jamnagar, was owner of three pieces of agricultural lands, i.e. (1) Survey No.572 admeasuring 3 Hectare 73 RA 32 Mtrs.; (2) Survey No.573 admeasuring 3 Hectare 98 RA 62 Mtrs.; and (3) Survey No.574 admeasuring 6 Hectare 12 RA 9 Mtrs., situate at Village Moti Khavdi, District : Jamnagar. The respondent No.4, i.e. Reliance Petroleum Limited, is a Public Limited Company. It has set up a mega petroleum refinery at Jamnagar. Its initial production capacity was 9 million metric tons per annum. For the purpose of constructing a housing colony for the employees of refinery, initially lands were acquired and the housing colony was built thereon with necessary amenities like hospital, school, bank, markets, gardens, sport and recreational facilities, etc. Subsequently, its production capacity was increased to 27 million metric tons per annum. Therefore, additional workmen and employees were recruited. The existing housing colony was not found sufficient to accommodate all the employees of the company. The respondent No.4 company needed more lands. Therefore, efforts were made to obtain lands by private negotiations. The company addressed letters dated

December 11, 2000 and invited the landowners for private negotiations. Those letters were dispatched under Certificate of Posting. Pursuant to service of letters to the landowners, Chhaganbhai Jethalal, who is grandson of Bhanaji Kanabhai, remained present for negotiations. He demanded compensation at the rate of Rs.2 Lacs per Vigha. The company in order to determine the market value of the lands to be acquired took into consideration the sale deeds relating to the lands situated in the area and offered Rs.20,500=00 per Vigha for non-irrigated lands and Rs.38,000=00 per Vigha for irrigated lands. Chhaganbhai did not accept the offer made by the respondent No.4-company. Thus, negotiations failed. The company, therefore, addressed letters dated December 27, 2000 to the Collector, Jamnagar, and the Deputy Secretary, Revenue Department, to acquire the lands to enable it to erect dwelling houses for its workmen and to provide necessary amenities to them. The Government vide letter dated January 24, 2001 directed concerned officer to enquire and furnish his report under Section 40 of the Act read with Rule 4 of the Land Acquisition (Companies) Rules, 1963 ("the Rules" for short). Pursuant to the directions of the Collector, Jamnagar, the Deputy Collector, Jamnagar, initiated inquiry under Rule 4 of the Rules. He, by letters dated February 28, 2001 addressed to the owners of the lands, asked them to remain present in his office for personal meeting on March 12, 2001. Deceased Raghaji Balubha did not remain present. The Deputy Collector also consulted District Agricultural Officer, who submitted his report dated April 3, 2001. The Deputy Collector, after hearing other landowners who remained present, submitted his report to the Collector on April 12, 2001. The Collector submitted his report to the Government on May 8, 2001. The Government issued notification under Section 4 of the Act on May 14, 2001 mentioning that the lands mentioned therein including the lands of the petitioners were likely to be needed for the purpose of the respondent No.4-company. The notification issued under Section 4 of the Act was published in "Sandesh" and "Indian Express" dailies on July 2, 2001. The Deputy Collector published notice dated June 16, 2001 under Section 4(1) of the Act inviting objections to be filed on or before July 17, 2001 and calling upon the interested persons to remain present in his office on July 23, 2001 for personal hearing. The petitioners filed their objections on July 10, 2001 through their advocate. After making inquiry, the Land Acquisition Officer forwarded his report under Section 5A(2) of the Act to the Government. The Government after considering report submitted to it, issued declaration under Section 6 of the Act on April 9, 2002. Notices under Section 9 of the Act were issued on August 26, 2002. Notification under Section 4 of the Act and declaration made under Section 6 of the Act are subject matters of challenge in instant petition.

**[3]** The petitioners have averred that earlier respondent No.4 had acquired lands admeasuring 126 Hectare 26 RA 7 Mtrs. from the villages of Lalpur Taluka and on parts of those lands, quarters were constructed, but 800 quarters are lying vacant as well as

unused and, therefore, need to acquire lands for erection of dwelling houses for workmen of the company is not genuine. It is mentioned that no material is supplied by the respondent No.4 to the Government to establish its need to acquire lands of the petitioners nor the Government is objectively satisfied that the acquisition is in the interest of public at large and, therefore, notification under Section 4 as well as declaration under Section 6 of the Act are bad in law. According to the petitioners, acquisition is for personal benefits of office-bearers, promoters and directors of the company, but not for public purpose and is, therefore, bad in law. It is claimed that though thousands of acres of lands are acquired by the respondent No.4, the petitioners are sought to be deprived of their valuable and good fertile lands and as the lands of the petitioners are not suitable for the purpose for which they are sought to be acquired, the acquisition proceedings should be regarded as illegal. It is mentioned in the petition that as the lands proposed to be acquired are agricultural lands, it was necessary to consult the Senior Agricultural Officer of the District to ascertain whether the lands were good agricultural lands, but record does not indicate that any consultation had taken place with the Senior Agricultural Officer of the District and, therefore, the report forwarded under Rule 4 of the Rules is bad in law. According to the petitioners, no opportunity of hearing was given either by the State or by the Collector or by the Deputy Collector and as the principles of natural justice were violated, notification under Section 4 and declaration under Section 6 of the Act challenged in the petition should be struck down. It is stated by the petitioners that the acquisition proceedings were initiated and continued and are going on in collusion with the respondent No.4, which is a powerful financial wizard and as the lands of the petitioners are selected maliciously, relief claimed in the petition should be granted. It is averred that agreement entered into between the respondent No.4 and the Government is bad in law because the petitioners were never heard nor Rule 4 of the Rules complied with nor the matters specified in Rule 4 of the Rules were considered and, therefore, notification under Section 6 of the Act should be regarded illegal. It is mentioned that the Government did not consult the Committee as required by Rule 4 of the Rules and, therefore, acquisition proceedings should be regarded as bad in law. According to the petitioners, the principles of natural justice are violated while conducting inquiry under Rule 4 of the Rules and as negotiations had not taken place with the respondent No.4, the petition should be accepted. The petitioners have emphasized that reasonable price was never offered by the respondent No.4 and, therefore, acquisition proceedings should be regarded as illegal. It is stated by the petitioners that the lands of the petitioners contain plenty of water and, therefore, acquisition of fertile lands when other alternative suitable lands are available, should be regarded as illegal. The petitioners have mentioned that no opportunity of hearing under Section 5A of the Act was accorded to the petitioners and, therefore, notification under Section 6 being void ab initio, should be set aside. It is mentioned that notice

issued under Section 9 of the Act is bad in law as mandatory provisions of the Act enacted for acquisition of lands for a company are violated. Under the circumstances, the petitioners have filed instant petition and claimed the reliefs to which reference is made earlier.

**[4]** On notice being served, the respondent No.4 company has opposed the petition by filing reply affidavit of Mr.Nilesh H.Baxi, who is General Manager (Legal). In the reply, a preliminary objection that the petition filed is barred by the principles of delay and laches, is raised. It is stated that notification under Section 4 of the Act was published in Government Gazette on May 14, 2001 and public notice was published in "Sandesh" and "Indian Express" dailies of July 2, 2001 whereas Section 6 declaration was published on April 9, 2002 and notices under Section 9 of the Act were issued on July 31, 2002 before which the company had furnished bank guarantee of Rs.26,34,837=00 on September 8, 2001 and also executed an agreement as contemplated by Section 41 of the Act on October 5, 2001, but the petition is filed belatedly on January 15, 2003 and, therefore, the same should be treated as barred by the principles of delay and laches. It is stated in the reply that need to acquire the lands is genuine and though the respondent No.4 has applied for Kharaba lands belonging to the Government, it is neither granted nor Kharaba land is contiguous nor touching to the boundaries of the existing colony and, therefore, the petitioners are not right in contending that the need for acquisition of lands is not genuine. It is denied in the reply that 800 quarters are vacant and unused and it is emphasized that 2000 employees of the respondent No.4 company with their families are residing in the rented premises in Jamnagar City as well as Village Moti Khavdi and, therefore, it is not true to say that the need of the company to acquire the lands is not genuine. It is pointed out that the petrochemical and petroleum refineries by their very nature are huge projects, which require large parcel of lands and earlier acquisition of lands admeasuring 126 Hectare 26 RA 7 Mtrs. cannot be regarded as excessive when I.P.C.L., which was formerly a Government Undertaking, acquired more than 800 Hectare of lands whereas Union of India built its petrochemical complex at Gandhar in 1990 on lands admeasuring 800 Hectares of lands. It is mentioned in the reply that the respondent company has set up its refinery in Jamnagar area and for the said purpose, it has acquired only that much land which is required. It is explained that the respondent company, being corporate body, cannot afford to waste money after unnecessary lands as it is bound to increase its overhead expenses which would, in turn, diminish profits and as the respondent No.4 is conservative in acquisition of the lands of private parties, the acquisition of the lands in this case should not be regarded as excessive. Dealing with the contention that the mandatory requirements of Section 40 of the Act and Rule 4 of the Rules have not been complied with, it is stated that the Collector forwarded his report with the report of the Senior Agricultural Officer, and the Government on receipt of the same

forwarded it to the Land Acquisition Committee for its consideration and, therefore, it is not correct to say that the mandatory requirements of law have not been fulfilled. It is mentioned that after considering the report of the Collector, the Government was satisfied that (1) the lands were required for expansion of housing colony of the workmen employed; (2) the said requirement was genuine; (3) the land sought to be acquired was best suited for the purpose; (4) the area of the land sought to be acquired was not excessive; (5) no other alternative lands were available; and, (6) the respondent No.4 had offered amount higher than the prevailing market value for obtaining lands by private negotiations and private negotiations had failed etc. and, therefore, it is not right to contend that requirements of Section 40 of the Act were not complied with. It is mentioned in the reply that the Collector while making inquiry under Rule 4 had issued letters dated February 28, 2001 and called upon the petitioners and others to remain present in his office for personal hearing, but the petitioners did not remain present and, therefore, it is wrong to contend that inquiry under Rule 4 of the Rules is bad in law. According to the respondent No.4, acquisition for constructing the housing colony and amenities related thereto have been always considered as for public purpose and it is pointed out that large project generates substantial revenue as well as foreign exchange to the nation and also provides employment on large-scale to the residents in the area and, therefore, it is not correct to plead that the acquisition is only for the benefits of the officers of the company. While dealing with the plea that there was absence of consultation with Senior Agricultural Officer, it is stated that the report of the Collector with the report of the Senior Agricultural Officer was received by the Government and forwarded by the Government to the Land Acquisition Committee and the report of the District Agricultural Officer, Jamnagar, dated April 3, 2001, mentions, inter alia, that the lands of the petitioners are ordinary, non-irrigated, agricultural lands. Refuting the claim of the petitioners that they were not heard in inquiry under Section 5A of the Act, it is asserted that after Section 4 notification, the petitioners filed objections on July 10, 2001 and, therefore, the Collector had called the petitioners and others for hearing on July 23, 2001 regarding which necessary Rojkam was prepared and the report was forwarded to the Government on December 24, 2001 which was considered by the Government and the Government after consulting the Land Acquisition Committee issued declaration under Section 6 of the Act on April 9, 2002. In the reply, it is emphasized that the lands are not acquired in colourable exercise of powers and as the averments made regarding mala fide exercise of powers are vague and not specific, the same should be ignored by the Court. The deponent of the affidavit-in-reply has mentioned that the statutory agreement under Section 41 of the Act was executed by the respondent No.4 on October 14, 2001, which was published in the Government Gazette on March 15, 2002 and by virtue of Section 42 of the Act, it has become part of the Act and, therefore, the petition should be dismissed. In answer to the claim of

the petitioners that negotiations had not taken place with their father, it is mentioned that three letters dated December 18, 2000 were properly addressed and sent to the father of the petitioners under Certificate of Posting, but the father of the petitioners did not remain present and, therefore, the proposal dated December 27, 2000 was forwarded to the Collector and the Deputy Secretary to acquire the lands in question. In the reply, it is mentioned that Survey No.25, which is adjoining the lands of the petitioners was purchased by its owner on May 8, 1997 for Rs.3,80,000=00, i.e. at the rate of Rs.13,305=00 per Vigha whereas the respondent No.4 offered Rs.20,500=00 per Vigha for non-irrigated lands and Rs.38,000=00 per Vigha for irrigated lands and, therefore, it is not correct to say that reasonable price was not offered by the respondent No.4. Dealing with the contention raised by the petitioners that valuable fertile lands are sought to be acquired, it is stated in the reply that Village Forms No.7/12 produced by the petitioners show that they were taking one crop in a year and that too of Bajra whereas report of the District Agricultural Officer dated April 3, 2001 mentions that the lands of the petitioners are ordinary, non-irrigated agricultural lands and, therefore, the claim that highly fertile lands are sought to be acquired, should not be accepted by the Court. By filing reply, the deponent has demanded dismissal of the petition.

**[5]** Mr.A.B.Rathod, Deputy Collector, Jamnagar, has filed affidavit-in-reply on behalf of the respondent No.3 controverting the averments made in the petition. In the reply, it is mentioned that it is not true that the lands of the petitioners, which are acquired, are highly fertile and garden lands and it is stated that as per extracts of Village Form No.7/12, the lands of the petitioners are Jirayat lands and this fact is also borne out from the report of the District Agricultural Officer wherein it is stated that the lands of the petitioners are non-irrigated and Jirayat lands. With reference to the plea that no hearing was given to the petitioners under Section 5A of the Act, it is stated that the Deputy Collector, Jamnagar, issued notice dated June 16, 2001 under Section 4(1) of the Act and invited objections from the petitioners and other affected persons to be filed on or before July 17, 2001 and they were also asked to appear in-person or through advocate on July 23, 2001 for personal hearing and as the petitioners submitted reply/objections on July 10, 2001, it is not true to say that no hearing was afforded to the petitioners under Section 5A of the Act. The allegation made by the petitioners that the respondent No.3 has not properly appreciated and considered the objections, is emphatically denied and it is stated that reply and objections filed were properly considered by the respondent No.3. With reference to inquiry under Rule 4 of the Rules, it is asserted in the reply that a letter/notice dated February 28, 2001 was addressed to the petitioners, which was sent under Certificate of Posting wherein it was specifically informed that the deceased should remain present in the office of the Deputy Collector on March 12, 2001 if he wanted to make representation at the inquiry

to be conducted under Rule 4 of the Rules read with Section 40 of the Act and on that day only, Bhanji Kanabhai remained present, but the deceased father of the petitioners did not remain present regarding which a detailed Rojkam was prepared on that day mentioning all relevant facts and, therefore, the plea that principles of natural justice were violated while conducting inquiry under Rule 4 of the Rules should not be accepted by the Court. In the reply, other facts are also stated, but this Court feels that detailed reference to the same is not warranted and, therefore, detailed reference to those facts is avoided at this stage. Thus, by filing detailed reply, the Deputy Collector, Jamnagar, has pointed out that all the relevant provisions of law were complied with before acquiring the lands of the petitioners for respondent No.4-company, and has prayed to dismiss the petition, which has no substance.

**[6]** Mr.Surubha Raghuji, who is Power of Attorney Holder of the petitioners, has filed rejoinder to the reply of Mr.Baxi filed on behalf of the respondent No.4 Company and controverted the averments made therein. He has, by and large, reiterated the facts stated in the petition and, therefore, detailed reference to the same is not made.

**[7]** Mr.C.S.Upadhyay, Deputy Secretary, Revenue Department, has filed reply affidavit on behalf of State controverting the averments made in the petition. In the reply, it is mentioned that notification under Section 4 and declaration under Section 6 of the Act as well as proceedings for acquisition of the lands registered as L.A.Q. Case No.4 of 2001 by the Government were challenged by one Kiritsinh R. Vala, who was owner of Survey No.46/1/1/1/1/3 by way of filing Special Civil Application No.8550 of 2002 and by Sejpal Mapa, who was owner of Survey No.29 Paiki, by filing Special Civil Application No.8551 of 2002 and Mr.A.B.Rathod, Deputy Collector, had filed affidavit-in-reply on September 23, 2002 in Special Civil Application No.8550 of 2002 whereas Mr.G.D.Vyas, Secretary, Land Reforms, had filed affidavit on January 22, 2003 and Mr.G.K.Malvi, Mamlatdar, Jamnagar, had filed affidavit on August 26, 2003, but those two petitions have been disposed of as withdrawn and as the issues raised in instant petition are similar and identical to those raised in the two disposed of petitions, he is craving leave of the Court to produce those affidavits filed in two disposed of petitions on the record of instant petition and rely upon the same to refute the claim of the petitioners. After craving leave as referred to above, Mr.C.S.Upadhyay, Deputy Secretary, Revenue Department, has produced along with his reply (1) affidavit-in-reply filed by Mr.G.D.Vyas, Secretary, Land Reforms, filed in Special Civil Application No.8550 of 2002 with annexures including (a) report dated April 12, 2001 forwarded by the Deputy Collector, Jamnagar, to the Collector, Jamnagar, after holding inquiry under Rule 4 of the Rules read with Section 40 of the Act; (b) order of the Collector, Jamnagar, dated January 25, 2001 designating the Deputy Collector, Jamnagar, to conduct inquiry under Rule 4 of the Rules read with Section 40 of the Act; (c) Rojkam

dated July 23, 2001 prepared by the Deputy Collector, Jamnagar, while conducting inquiry under Section 5A of the Act; (2) affidavit-in-reply filed by Mr.Arjunsinh B.Rathod, Deputy Collector, Jamnagar, in Special Civil Application No.8550 of 2002 with annexures, which were produced by Mr.G.D.Vyas, Secretary, Land Reforms, with his reply; (3) affidavit of Mr.G.K.Malvi, Mamlatdar, Jamnagar (Rural), Jamnagar, filed in Special Civil Application No.8550 of 2002 with annexures including (a) intimation dated March 7, 2001 from Talati-cum-Mantri, Moti Khavdi, to the Deputy Collector, Jamnagar, stating that the landowners mentioned therein were not staying in the Village and, therefore, notices were affixed on lands of the owners; (b) panchnama dated March 7, 2001 indicating that notices dated February 28, 2001 sent by the Collector to Talati-cum-Mantri, Moti Khavdi, to be served upon land-holders were affixed on lands; (c) intimation dated March 3, 2001 sent by the Deputy Collector, Jamnagar, to Talati-cum-Mantri, Moti Khavdi, stating that notices issued to the land holders before conducting inquiry under Rule 4 of the Rules read with Section 40 of the Act which were sent under Certificate of Posting were received back unserved and asking the Talati-cum-Mantri to serve notices to the land holders.

**[8]** Mr.Surubha Raghaji, who is Power of Attorney Holder of the petitioners, has filed affidavit-in-reply objecting to the course adopted by the Mr.Upadhyay in producing affidavits and annexures filed in other cases on record of the petition and has claimed that the same should be ignored from the consideration. He has reiterated what is stated in the petition and, therefore, detailed reference to the same is avoided.

**[9]** During the course of hearing of the petition, Mr.C.S.Upadhyay, Deputy Secretary, Revenue Department, has filed affidavit-in-reply on August 22, 2005. In the said affidavit, it is mentioned that by filing affidavit dated July 26, 2005 in instant petition, he has adopted affidavit dated January 16, 2003 filed by Mr.G.D.Vyas, the then Secretary, Land Reforms, Sachivalaya, Gandhinagar, as part of his affidavit-in-reply wherein it is, inter alia, mentioned that the report submitted by the Collector, Jamnagar, dated May 8, 2001 was scrutinized by the Government after which notification under Section 4 was issued on May 14, 2001, but that report was not produced on record by Mr.Vyas along with his reply affidavit. In the fresh affidavit, after stating that the Collector, Jamnagar, after making necessary inquiry submitted his report under Rule 4 of the Rules read with Section 40 of the Act to the Government on May 8, 2001, Mr.Upadhyay, Deputy Secretary, Revenue Department, has produced the report dated May 8, 2001 on the record of this petition.

**[10]** Mr.B.P.Munshi, learned counsel of the petitioners, emphasized that no evidence is produced either by Mr.A.B.Rathod, Deputy Collector, Jamnagar, who has filed affidavit on June 9, 2003 or by Mr.C.S.Upadhyay, Deputy Secretary, Revenue Department, who has filed affidavit on July 26, 2005 to show that inquiry as contemplated by Rule 4 was

made and, therefore, the petition should be accepted in view of breach of Rule 4 of the Rules. According to Mr.Munshi, learned counsel of the petitioners, the petitioners are not concerned at all with affidavit-in-reply filed by Mr.G.D.Vyas, Secretary, Land Reforms, in Special Civil Application No.8550 of 2002, which was instituted by one Kiritsinh R. Vala and, therefore, report indicating compliance of Rule 4 of the Rules produced with that affidavit, should not be taken into consideration while determining the question whether Rule 4 of the Rules was complied with. It was pleaded that the practice of adopting affidavit filed in another case as well as the documents produced with that affidavit is contrary to Rule 26 of the Gujarat High Court Rules, 1993 and as reliance placed on documents produced on record of Special Civil Application No.8550 of 2002 has caused prejudice to the petitioners, the affidavits filed in that case and the documents produced with those affidavits sought to be relied upon, should be ordered to be struck off from the record of instant petition. It was contended that deceased Raghaji Balubha was resident of Village Gagva, which is quite evident from the revenue records produced on the record of the case, but letter dated December 11, 2000 was addressed to him, by the respondent No.4-Company under Certificate of Posting, contrary to the provisions of Section 45 of the Act, at Moti Khavdi, inviting him to remain present for private negotiations which was not received by him as a result of which he could not remain present for private negotiations, and as the respondent No.4 had failed to establish that it had made all reasonable efforts to get the lands of the petitioners by negotiations on payment of reasonable price and such efforts had failed, the Deputy Collector could not have mentioned in his report that negotiations had failed and, therefore, acquisition proceedings should be set aside. The learned counsel argued that the company has already acquired other lands including kharaba, i.e. waste land, totally admeasuring Hectare 140 21 RA 66 Mtrs. and as nature of acquisition of the lands of the petitioners is not only excessive, but unwarranted, notification under Section 4 as well as declaration under Section 6 of the Act issued should be quashed. After referring to the parts of averments made in paragraph 8 of the reply of the respondent No.4 to the effect that "the respondent-company being a corporate body cannot afford to waste money after unnecessary land as the same results in increasing its overheads and thereby diminishes its profit", it was argued that the acquisition is for profits of the respondent No.4 company which is contrary to the principle laid down by the Supreme Court in R.L.Arora vs. the State of Uttar Pradesh & Ors., 1962 AIR(SC) 764, and, therefore, the reliefs claimed in the petition should be granted. In the alternative, Mr.Munshi, learned counsel of the petitioners, contended that principles of natural justice were not followed before forwarding the report under Rule 4 of the Rules and, therefore also, the impugned notification and declaration are liable to be set aside. It was asserted that hearing under Section 5A of the Act was not afforded to the deceased as a result of which, notification under Section 6 of the Act, which is null and void, should be set aside. According to Mr.Munshi, the learned counsel

of the petitioners, the ostensible purpose of the acquisition of the lands of the petitioners is for the erection of dwelling houses for workmen employed by the company, but the affidavit of the company makes it clear that the purpose of acquisition is to provide housing accommodation to the officers and the amenities to them and as the officers of the company are not workmen within the meaning of the Industrial Disputes Act, the reliefs claimed in the petition should be granted. It was argued that the acquisition of highly fertile land is not only excessive, but is not likely to be useful to the public at large and as the acquisition is not for public purpose, the same should be set aside. In support of these contentions, Mr.Munshi, learned counsel of the petitioners, placed reliance on decisions in (1) R.L.Arora vs. State of Uttar Pradesh, 1962 AIR(SC) 764; (2) State of Gujarat & Ors. vs. Patel Chaturbhai Narsinbhai & Ors., 1975 AIR(SC) 629; (3) State of Gujarat & Ors. vs. Ambalal Haiderbhai, 1976 AIR(SC) 2002; (4) The General Govt. Servants Coop. Housing Soc. Ltd., Agra vs. Wahab Uddin & Ors., 1981 AIR(SC) 866; (5) Shyam Nandan Prasad & Ors. vs. State of Bihar & Ors., 1993 4 SCC 255; (6) Srinivasa Cooperative House Building Society Limited vs. Madam Gurumurthy Sastry & Ors., 1994 4 SCC 675; (7) Jnanedaya Yogam & Anr. vs. K.K.Pankajakshy & Ors., 1999 9 SCC 492; (8) H.M.T. House Building Cooperative Society vs. Syed Khander & Ors., 1995 AIR(SC) 2244; and, (9) State of West Bengal & Ors. vs. P.N.Talukdar, 1965 AIR(SC) 646.

**[11]** Mr.S.N.Shelat, learned Advocate General for the State, pointed out that it is not disputed that there was an inquiry under Rule 4 of the Rules read with Section 40 of the Act and this is evident from the report of the Deputy Collector, Jamnagar, submitted on April 12, 2001 to the Collector, Jamnagar, which is produced on running page 252 of the compilation. The learned Advocate General drew the attention of the Court to the decision in Shyamnandan Prasad v. State of Bihar, 1993 4 SCC 255, to emphasis that the Collector is required to hold an inquiry in quasi-judicial sense and would give not only to the company a reasonable opportunity to make good its representation in that behalf but would also, to fulfill the needs of rules of natural justice, give sufficient opportunity to the land owners to refute the case of the company at least insofar as a matter like negotiation of price is concerned as also other relevant matters and argued that record clearly shows that principles of natural justice were complied with by the Deputy Collector while holding inquiry under Rule 4 of the Rules read with Section 40 of the Act. After referring to the communication dated March 3, 2001 from the Deputy Collector, Jamnagar, to Talati-cum-Mantri, Moti Khavdi, it was pointed out that before conducting inquiry under Rule 4 read with Section 40 of the Act, the Deputy Collector, Jamnagar, had issued notice dated February 28, 2001 to the land owners under certificate of posting, but the covers containing the notices were returned unserved and, therefore, by the said communication, Talati-cum-Mantri was directed to serve notices to the landowners after due verification, and report to the

Office of the Deputy Collector after preparing Rojkam. The learned Advocate General pointed out Rojkam dated March 7, 2001 prepared by Talati-cum-Mantri in presence of two panch witnesses, which is on running page 264 of the compilation, to contend that as the petitioners and others were not residing at Village Moti Khavdi and their residential addresses were not available, the notices were affixed on prominent part of the lands belonging to the petitioners and others. To complete the sequence, it was pointed out that thereafter report with the Rojkam was forwarded by the Talati-cum-Mantri, Moti Khavdi, to Deputy Collector, Jamnagar, on March 7, 2001 and this is quite evident from the document, which is on running page 263 of the compilation. After referring to above-mentioned documents, it was argued that principles of natural justice were complied with by the Deputy Collector, but the petitioners did not remain present before the Deputy Collector on the specified date and, therefore, it is wrong to contend that principles of natural justice were violated by the Deputy Collector, Jamnagar, while conducting inquiry under Rule 4 of the Rules read with Section 40 of the Act. It was argued that two affidavits, i.e. one by Mr.A.B.Rathod, Deputy Collector, Jamnagar, and another by Mr.C.S.Upadhyay, Deputy Secretary, R.D., have been filed in instant petition as well as in Special Civil Application No.514 of 2003 while answering the averments made therein, which were clubbed together with Special Civil Application No.8550 of 2002, treating it as main petition and as the acquisition of lands is pursuant to the same notification under Section 4 of the Act as well as declaration made under Section 6 of the Act, Mr.Upadhyay is justified in adopting and producing affidavits-in-reply filed in Special Civil Application No.8550 of 2002 to point out that Rule 4 of the Rules was fully complied with. In the alternative, it was argued that affidavits and documents produced in judicial proceedings, i.e. in Special Civil Application No.8550 of 2002 are public documents and could be relied upon by the parties in support of their case more particularly when an affidavit with reasons is filed by Mr.Upadhyay seeking permission of the Court to produce and rely upon those documents in instant petition. The learned Advocate General read out in extenso the report of the Collector dated April 12, 2001 which roughly runs into, closely typed six pages to bring home his point that all the six matters mentioned in Rule 4 of the Rules were considered by the Deputy Collector and dealt with in detail and as Court exercising writ jurisdiction is not sitting in appeal over the report, the plea that inquiry under Rule 4 of the Rules is vitiated, should be rejected. Emphasizing this point, it was asserted by the learned Advocate General that satisfaction under Rule 4 of the Rules is subjective satisfaction, if satisfaction under Section 6 of the Act as held by the Division Bench of this Court in Patel Gandalal Somnath & Ors. vs. State of Gujarat, 1963 GLR 326, is subjective and the satisfaction arrived at, by the competent authority after considering material placed before him, should not be lightly interfered with, unless good grounds exist. According to the learned Advocate General, satisfaction under Rule 4 of the Rules has to be considered in the light of the provisions of Section 39 of the

Act because inquiry under Section 4 of the Rules is the first step followed by other steps to be taken as provided by law and the Court is only entitled to make a limited inquiry as to whether informed decision under Rule 4 of the Rules was taken on the basis of which, action for initiation of land acquisition proceedings was taken, but cannot sit in appeal over the report under Rule 4 of the Rules nor correctness of the decision arrived therein can be gone into. It was asserted that as scope of interference by a Court of law with such report is limited, the Court cannot come to the conclusion that private negotiations had not taken place or not failed as pleaded on behalf of the petitioners. Refuting the claim advanced on behalf of the petitioners that the opportunity of hearing was not given during the inquiry conducted under Section 5A of the Act and, therefore, notification under Section 6 of the Act is bad in law, it was argued that the objections were filed by the petitioners on July 10, 2001 through their advocate Mr.Narendra Vasudev Vyas, who had remained present before the Deputy Collector on July 23, 2001 as well as participated in the proceedings by making oral submissions also whereas Mohmed Ismailbhai, who has instituted Special Civil Application No.514 of 2003, filed objections dated July 10, 2001 on behalf of the petitioner in Special Civil Application No.514 of 2003, but did not remain personally present though informed and, therefore, it is not correct to contend that inquiry under Section 5A of the Act is vitiated because of non-observance of principles of natural justice. The learned Advocate General drew the attention of the Court to Rojkam dated July 23, 2001 prepared by the Deputy Collector, Jamnagar and singed by those who had remained personally present including four landowners, which is on record of the case at Page 260 of the compilation, to contend that the petitioners did not remain present at the hearing and, therefore, they are not justified in raising grievance that they were not heard when inquiry under Section 5A(2) of the Act was made. Dealing with the contention that the Officers of the company are not 'workmen' under the Industrial Disputes Act and, therefore, the acquisition of the lands to provide housing facilities to them should be regarded as bad in law, it was emphasized that provisions of Section 40(1)(a) of the Act are attracted to the facts of the case and, therefore, the land acquisition proceedings would not fall to the ground if the acquisition is also for workmen of the company. It was maintained that liberal construction should be placed by the Court on provisions of Section 40 of the Act and it should be held that the provisions under Section 40 of the Act can be pressed into service by the company to provide housing facilities for all those who work for the company, and the narrow interpretation which is sought to be canvassed on behalf of the petitioners with reference to the provisions of the Industrial Disputes Act should not be accepted by the Court. The learned Advocate General asserted that notification under Section 6 of the Act was published on April 9, 2002, but instant petition was belatedly instituted and taken up for admission hearing on January 24, 2003 and, therefore, the petition is liable to be dismissed on short ground of delay and laches on the part of the petitioners

in approaching the Court. The learned Advocate General pointed out that the record shows that independently, the petitioners never wanted to challenge the land acquisition proceedings, but were tempted to approach the Court only when one of the land owners, i.e. Kiritsinh Vala, approached the Court by filing Special Civil Application No.8550 of 2001 and obtained stay and, therefore, in view of delay on the part of the petitioners in approaching the Court, which must be viewed in the light of weighty observations made by the Supreme Court in Ramniklal N. Bhutta vs. State of Maharashtra, 1997 AIR(SC) 1236, warning the Courts not to grant stay in land acquisition cases, the petition should be dismissed.

**[12]** Mr.K.S.Nanavati, learned Senior Advocate appearing for the respondent No.4 company, contended that the petition filed by the petitioners suffers from gross delay and, therefore, on that ground alone, the petition should be dismissed. Elaborating this contention, it was claimed that notification under Section 4 of the Act was issued on May 14, 2001 whereas declaration under Section 6 of the Act was made on April 9, 2002 after which notices under Section 9 of the Act were issued on August 26, 2002 and the petition, which was affirmed on December 28, 2002, was moved before the Court on January 24, 2003, i.e. almost after eight months from the date of issuance of declaration under Section 6 of the Act and, as there is gross delay in filing the petition, the same should be dismissed. The learned counsel also pointed out that after issuance of notification under Section 4 of the Act on May 14, 2001, the respondent No.4 company has changed its position by furnishing bank guarantee to the Government worth Rs.26,34,837=00 on September 8, 2001 and also by executing an agreement as contemplated by Section 41 of the Act on October 5, 2001 and, therefore, instant petition, which is barred by gross delay and laches, should be dismissed. In support of this plea, the learned counsel placed reliance on the decisions in (1) Reliance Petroleum Limited vs. Zaver Chand Popatlal Sumaria, 1996 4 SCC 579 and (2) Pratapsang Naranji Jadeja vs. State of Gujarat & Ors., 1998 1 GLH 499. The learned counsel of the respondent No.4 pointed out to the Court that what is highlight1ed on behalf of the petitioners is non-compliance of Rule 4 of the Rules both insofar as the company has failed to negotiate directly with landowners before moving Government for initiating acquisition proceedings and even at the stage of inquiry by the Collector under Rule 4 of the Rules inasmuch as the petitioners did not receive notice of inquiry under Rule 4, but the averments made in the petition indicate that the grievance made by the petitioners is that no inquiry under Rule 4 of the Rules was conducted at all and, therefore, if the record indicates that, in fact, inquiry as contemplated by Rule 4 of the Rules was made by the Collector, the issue relating to non-receipt of notice before conducting the inquiry under Rule 4 of the Rules should not be gone into by the Court at all. It was argued that the affidavit filed by Mr.G.K.Malvi, Mamlatdar, Jamnagar (Rural), Taluka & District Jamnagar, on August 26, 2003, which is adopted by

Mr.C.S.Upadhyay by filing affidavit-in-reply dated July 26, 2005 and the Rojkam produced along with affidavit of Mr.Malvi would indicate that, in fact, inquiry under Rule 4 of the Rules was conducted by the competent authority and necessary report was forwarded to the Collector, which is evident from the affidavit of Mr.Arjunsinh B.Rathod, Deputy Collector, Jamnagar, filed on September 23, 2002 in Special Civil Application No.8550 of 2002 which is also adopted by Mr.Upadhyay and once the fact that inquiry under Rule 4 was conducted is established, the Court should not go into the question whether the principles of natural justice were complied with. After pointing out averments made in paragraphs 4.5 and 4.6 of the petition, it was emphasized that what is claimed by the petitioners is that the respondents had violated the provisions of Rule 4 and that no inquiry as contemplated by Rule 4 of the Rules was made, but once it is established that inquiry under Rule 4 of the Rules was conducted, the contention that the petitioners were not given opportunity of being heard, pales into insignificance. In the alternative, it was argued that even if the Court was inclined to examine the plea whether principles of natural justice were complied with, the record shows that necessary notices were sent to the petitioners by the Deputy Collector, Jamnagar, on February 28, 2001 under Certificate of Posting, but the covers containing notices were received back from Post Department as the petitioners were not available and, therefore, by a communication dated March 3, 2001, the Deputy Collector, Jamnagar, had directed the Talati-cum-Mantri, Moti Khavdi, to effect service of notices on the petitioners after due verification, whereas panchkyas prepared on March 7, 2001 by Talati-cum-Mantri, Moti Khavdi, in presence of panch witnesses read with communication dated March 7, 2001 addressed by Talati-cum-Mantri, Moti Khavdi, to the Deputy Collector, Jamnagar, establishes that substituted service of notices sent by the Deputy Collector was effected on the petitioners as required by Section 45(3) of the Act and, therefore, it is not true to say that the petitioners were not served or that principles of natural justice were violated, before making inquiry under Rule 4 of the Rules. The learned counsel of the respondent No.4 pointed out that the course adopted by Mr.C.S.Upadhyay, Deputy Secretary, Revenue Department, to refer to and rely upon the affidavits filed by the Government Officers in other petitions relating to the same acquisition cannot be regarded as unusual or contrary to Rule 26 of the Gujarat High Court Rules,1 993, as contended by the learned counsel of the petitioners, and that the same should be taken into consideration by this Court while determining the question whether the petitioner were served or not before holding inquiry under Rule 4 of the Rules. The learned counsel of the respondent No.4-company asserted that though the petitioners were duly served with the notices before conducting inquiry under Rule 4 of the Rules, they did not avail of opportunity at all and, therefore, it is wrong to contend that the principles of natural justice were violated. The learned counsel emphasized that the petitioners have not stated any where that deceased Raghaji Balubha, who was their father, was not served with the notice before inquiry under Rule 4 of the

Rules was conducted nor have they stated that they had personal knowledge that their father was not served before inquiry under Rule 4 of the Rules conducted and, therefore, the plea regarding non-service of notice to the deceased should not be entertained by the Court. It was pointed out that in the objections, which were filed on July 10, 2001 pursuant to notice under Section 4(1) of the Act, it is no where stated that deceased Raghaji was not served with the notice under Rule 4 of the Rules as a result of which, the plea that the deceased was not served with the notice being substanceless should not be accepted by the Court. After referring to paragraph 6 of the objections dated July 10, 2001, the learned counsel of the respondent No.4 pointed out that what is claimed by the petitioners is that there was non-compliance of Rules 4 and 5, but it was not stated specifically that notices under Rule 4 of the Rules were never served either on the deceased and/or on them by the company for private negotiations or by the competent authority while making inquiry under Rule 4 of the Rules and, therefore, the contention that notices under Rule 4 of the Rules were not served, should be rejected outright. According to the learned counsel of the respondent No.4, at the stage of filing objections on July 10, 2001, the petitioners knew very well that there was inquiry under Rule 4 of the Rules, but did not challenge the same on the ground that inquiry was made in violation of principles of natural justice nor in the objections such a contention was raised and, therefore, the Court should not go into plea based on non-service of notice before making inquiry under Rule 4 of the Rules. In the alternative, it was argued that this is not a case wherein no inquiry under Rule 4 of the Rules was conducted, but what is claimed by the petitioners is that their father was not served with notice under Rule 4 of the Rules and as the petitioners had opportunity to raise all the contentions during the course of inquiry made under Section 5A of the Act, they are not prejudiced at all and, therefore, inquiry conducted under Rule 4 of the Rules should not be regarded as bad in law because of violation of principles of natural justice. In support of this plea, the learned counsel placed reliance on the decisions in (1) Pratapsang Naranji Jadeja , (2) Divisional Manager, Plantation Division, Andaman & Nicobar Islands vs. Munnu Barrick & Ors., 2005 2 SCC 237, and (3) Aligarh Muslim University & Ors. vs. Mansoor Ali Khan, 2000 7 SCC 529. The learned counsel drew the attention of this Court to paragraph 3.9 of the petition and pointed out that it is stated in the said paragraph that notices under Section 9 of the Act were served on them whereas copies of notices are produced by them on Page 40 of the compilation, which indicates that notices were served on the petitioners at Village Moti Khavdi as a result of which, the petitioners should not be heard to say that they are not residing at Village Moti Khavdi, but at Village Gagva and, therefore, notice under Rule 4 of the Act had not gone to the deceased at proper address. According to the learned counsel of the respondent No.4, whether the need is genuine or whether acquisition is excessive, etc. are the matters for satisfaction of the State Government and once the declaration under Section 6 is made, it is conclusive proof of the fact that the land is needed by

the company and the acquisition is not excessive and the Court should not go into those matters as if sitting in appeal. The learned counsel asserted that the six matters enumerated in Rule 4 of the Rules are meant for consideration of the competent authority and the Court would not go behind the declaration under Section 6 of the Act unless it is found to have been made in colourable exercise of powers. The learned counsel, in the alternative, referred to the averments made in paragraphs 5.1 and 5.2 of the affidavit-in-reply filed on behalf of the respondent No.4-company to emphasis that need of the company to acquire the lands is just and that even future need also deserves to be taken into consideration. The learned counsel pointed out that the acquisition of the lands is not for profits of the company inasmuch as the lands acquired for the company cannot be sold and/or alienated without previous sanction of the Government as contemplated under Section 44A of the Act and, therefore, the plea that the acquisition of the lands is for profits of the company should not be accepted by the Court. The learned counsel emphasized that there is no substance in the petition and, therefore, the same should be dismissed with costs.

**[13]** Mr.B.P.Munshi, learned counsel of the petitioners, in reply submitted that mandatory provisions of Sections 39, 40 read with Rule 4 of the Rules are not complied with and as they cannot be dispensed with, question of prejudice pales into insignificance. The learned counsel of petitioners referred to the decision in Rajan Singh & Ors. vs. State & Anr., 1959 AIR(All) 635, to contend that where action of the Government in issuing notification under Section 6 of the Act is in clear violation of provisions of Section 39 of the Act which provisions are mandatory in their nature, the contention that petitioners were not in any way prejudiced by omission to carry out provisions of Part VII should not be accepted. What was highlight1ed by Mr.Munshi, learned counsel of the petitioners, was that the question whether notice of inquiry to land holders under Rule 4(2) of the Rule is mandatory in view of the provisions of Section 5A of the Act, is referred to a larger Bench of the Supreme Court for its consideration, which is quite evident from the order in case of Swasthya Raksha Samiti Rati Chowk vs. Chaudhary Ram Harakh Chand (D) by L.Rs. & Ors., 2005 AIR(SCW) 1552 and, therefore, till the point is decided by the larger Bench of the Supreme Court, hearing of this petition should be deferred and interim relief granted earlier should be directed to continue.

**[14]** This Court has heard Mr.B.P.Munshi, learned counsel of the petitioners, as well as Mr.S.N.Shelat, learned Advocate General appearing for the State, and Mr.K.S.Nanavati, learned Senior Advocate appearing on behalf of the respondent No.4-company, at length and in great detail. This Court has also considered the entire record of the case.

**[15]** The order sheet indicates that the petition was listed before the Division Bench comprising J.N.Bhatt, J. (as he then was) and A.S.Dave, J. on October 8, 2004, and

after hearing the learned counsels of the parties, following order was passed by the Court:

> "Learned Assistant Government Pleader, Mr.Pandya seeks time for filing affidavit-in-reply in these group matters. Upon consensus, the office is directed to notify Special Civil Application Nos.8550/02, 8551/02, 514/03 and 521/03 for final hearing on 28/10/2004, which are already notified, today, for final hearing."

**[16]** Thus, above quoted order makes it evident that though instant petition is at the notice stage, the same is placed before the Court for final disposal. As indicated earlier, several decisions at the Bar have been cited by the learned counsels of the parties for guidance of this Court. However, this Court does not propose to refer to all of them in detail and burden unnecessarily this judgment which has, even otherwise, become lengthy.

**[17]** This is a case relating to acquisition of the lands for the purpose of respondent No.4, which is a public limited company. Therefore, it would be relevant to notice the scheme for acquisition of land for the company as provided under the Act. Part VII consists of Sections 38A to 44B and apply to acquisition for companies. Though the words "public purpose" in Sections 4 and 6 have the same meaning, they have to be read in the restricted sense in accordance with Section 40 of the Act. Section 39, inter alia, provides that the provisions of Sections 6 to 16 and 18 to 37 shall not be put in force in order to acquire the land for any company unless two conditions precedent have been satisfied, i.e. (1) the previous consent of appropriate Government has been given to acquisition; and, (2) the company has entered into an agreement as per Section 41 of the Act. Gujarat Act 20 of 1965 came into effect on July 9, 1965. By Section 18 of the Gujarat Act called 'the Land Acquisition (Gujarat Unification and Amendment) Act, Section 39 of the Act was amended. The result of the amendment of Section 39 of the Act is that the provisions of Sections 4 to 37 of the Act cannot be put in force unless the previous consent of the appropriate Government is obtained and unless the company has executed an agreement. Section 40 which deals with the previous inquiry is amended by Section 19 of the Land Acquisition (Gujarat Unification and Amendment) Act, 20 of 1965, and in view of this amendment, consent contemplated by Section 39 cannot be given unless appropriate Government is satisfied by an inquiry held as provided, inter alia, that the purpose of acquisition is to obtain land for the erection of dwelling houses for the workmen employed by the company or for the provisions of amenities directly connected therewith. In exercise of powers conferred by Section 55 of the Act, the Central Government has made the Rules for guidance of the State Government and its officers known as "the Land Acquisition (Companies) Rules, 1963". Rule 4 which is relevant for the purpose of deciding this petition reads as under:

"4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings- (1) Whenever a company makes an application to the appropriate Government for acquisition of any land that Government shall direct the Collector to submit a report to it on the following matters, namely:-

that the company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition;

that the company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

that the land proposed to be acquired is suitable for the purpose;

that the area of land proposed to be acquired is not excessive;

that the company is in a position to utilize the land expeditiously; and,

where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity to make any representation in this behalf, hold an enquiry into the matters referred to in sub-rule (1) and while holding such enquiry, he shall-

(i) in any case where the land proposed to be acquired is agricultural, consult the senior Agricultural Officer of the District whether or not such land is good agriculture land;

(ii) determine, having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land which, in the opinion of the Collector should be acquired for the company; and,

(iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation- For the purpose of this rule 'good agricultural land' means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under sub-rule (2), the Collector shall submit a report to the appropriate Government and a copy of the same shall

be forwarded by that Government to the Committee.

(4) No declaration shall be made by the appropriate Government under Section 6 of the Act unless-

(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted under Section 5-A of the Act; and,

(ii) the agreement under Section 41 of the act has been executed by the company."

**[18]** A conjoint and meaningful reading of the provisions of the Act and the Rules makes it evident that whenever the company makes an application to the appropriate Government for acquisition of any land, the Government has to direct the Collector to submit a report to it on the six matters specified in sub-rule (1) of Rule 4 of the Rules. The Collector has to give the company a reasonable opportunity to make its representation on the six matters specified in sub-rule (1). As interpreted by the Supreme Court in State of Gujarat vs. Ambalal, 1976 AIR(SC) 2002, enquiry under Rule 4 of the Rules requires compliance with the rules of natural justice and, therefore, the Collector has also to afford reasonable opportunity of being heard to the persons interested in the lands and also allow them to adduce material before him to refute the allegations of the company. After making enquiry, the Collector has to forward his report to the Government and the Government has to send a copy thereof to the Land Acquisition Committee constituted under Rule 3 of the Rules. On receipt of the report, the Government may, inter alia, be satisfied that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provisions of amenities directly connected therewith. If such a satisfaction is arrived at, consent can be given and agreement can be executed as provided in Section 39 and, thereafter, only provisions of Sections 4 to 37 can be put in force to acquire the land for the company.

Having noticed the scheme, the Court proposes to consider the submissions advanced at the Bar.

**[19]** The contention raised on behalf of the petitioners that no inquiry under Rule 4 of the Rules was conducted and, therefore, the petitioners are entitled to reliefs claimed in the petition, is devoid of merits. As noticed earlier, Mr.A.B.Rathod, Deputy Collector, Jamnagar, has filed affidavit-in-reply on June 9, 2003 in instant petition. In paragraph 15, it is mentioned by Mr.Rathod that a letter/notice dated February 28, 2001 was issued by his office, which was sent to the petitioners by U.P.C. in which it was specifically informed to the petitioners that if they wanted to make representation in the inquiry to be conducted under Rule 4 of the Rules and Section 40 of the Act, they

should remain present in his office on March 12, 2001. It is further mentioned by Mr.Rathod that the petitioners did not remain present on March 12, 2001 in the office of the respondent No.3 and on that day, one of the claimants namely, Mr.Bhanaji Kana, son of Samara Bhanaji, remained present in the office of the respondent No.3 and that Rojnama was also prepared with regard to the said fact. As noticed earlier, Mr.Upadhyay, Deputy Secretary, Revenue Department, has adopted affidavit-in-reply filed by Mr.Vyas, who was then Secretary, Land Reforms, as well as that of Mr.Rathod and the affidavit-in-reply filed by Mr.Malvi in Special Civil Application No.8550 of 2002. The document dated April 12, 2001, which is on Page 232 of the compilation produced along with the reply of Mr.Vyas (which is also produced by Mr.A.B.Rathod, Deputy Collector, Jamnagar, with his affidavit-in-reply which was filed in Special Civil Application No.8550 of 2002) would indicate that inquiry was made by the competent authority under Rule 4 of the Rules read with Section 40 of the Act, and report was forwarded to the Collector, Jamnagar, on April 12, 2001. The affidavit filed by Mr.Upadhyay on August 22, 2005 in instant petition would further indicate that the Collector had forwarded the necessary report to the State Government on May 8, 2001, i.e. after receipt of the report dated April 12, 2001 from the Deputy Collector, Jamnagar. Thus, there is no manner of doubt that inquiry under Rule 4 of the Rules was conducted by the competent authority and that necessary report was forwarded to the Collector and thereafter to the State Government.

**[20]** The plea that affidavit-in-reply of Mr.A.B.Rathod, Deputy Collector, Jamnagar, filed in Special Civil Application No.8550 of 2002 and the documents produced with the said reply as well as the affidavit-in-reply filed by the Mr.G.D.Vyas, Secretary, Land Reforms, Sachivalaya, Gandhinagar, in that petition and the affidavit filed by Mr.Malvi, Mamlatdar, Jamnagar (Rural), Taluka & District: Jamnagar, filed in the said petition as well as the documents produced by him with his affidavit, should not be looked into by the Court because they relate to another matter with which the petitioners are not concerned and, the practice of adopting affidavit-in-reply filed in another petition is contrary to Rule 26 of the Gujarat High Court Rules, 1993, cannot be accepted. Order dated October 8, 2004 passed by the Division Bench of this Court, which is quoted above, makes it evident that all the four petitions were to be heard together. In fact, Special Civil Application No.8550 of 2002 was treated as main matter wherein detailed affidavits-in-reply were filed. Further, the acquisition of the lands of the petitioners in Special Civil Application No.8550 of 2002 and the acquisition of the lands of the petitioners are under the same notification, which was issued under Section 4 of the Act and also under same declaration made by the Government, which was published under Section 6 of the Act. Therefore, for the sake of brevity, Mr.C.S.Upadhyay, Deputy Secretary, Revenue Department, has adopted the affidavits and documents produced along with them, which were filed in Special Civil Application No.8550 of 2002. This

course adopted by Mr.Upadhyay cannot be termed as contrary to Rule 26 of the Gujarat High Court Rules, 1993 at all. Further, the affidavit of the Government Officer and the documents produced by them in Special Civil Application No.8550 of 2002 are public documents within the meaning of Section 74 of the Evidence Act and can be looked into by the Court when they are sought to be relied upon by filing affidavit in instant proceedings. Therefore, the plea that neither the affidavits filed in Special Civil Application No.8550 of 2002 nor the documents produced on record of Special Civil Application No.8550 of 2002 should be looked into by the Court while deciding the issue raised in instant petition, cannot be accepted.

A bare perusal of the documents produced by Mr.Rathod and Mr.Malvi would indicate that an enquiry under Rule 4 of the Rules was, in fact, conducted. The main thrust of the contention of the petitioners is that no inquiry under Rule 4 of the Rules was made at all. Once the Court finds that enquiry under Rule 4 of the Rules was made, strictly speaking, it is not necessary for the Court to examine further question whether principles of natural justice were complied with while making inquiry under Rule 4 of the Rules. However, in order to satisfy itself that the principles of natural justice were complied with by the competent authority while making inquiry under rule 4 of the Rules, this Court has perused the documents on record. The documents on record would indicate that notices dated February 28, 2001 were sent to the landowners including the deceased under Certificate of Posting before making inquiry under Rule 4 of the Rules read with Section 40 of the Act. The covers containing the notice were received back by him and, therefore, by a communication dated March 3, 2001, the Deputy Collector, Jamnagar, had directed Talati-cum-Mantri to effect service of the notice on the landowners after due verification and report the same after preparing Rojkam. This is quite evident from the document, which is on running page 265 of the compilation. The record further shows that pursuant to the direction given by the Deputy Collector, Jamnagar, the Talati-cum-Mantri, Moti Khavdi, had effected substituted service of notice on the deceased and others in presence of panch witnesses. This is quite evident from the contents of panchnama dated March 7, 2001, which is produced on running page 264 of the compilation. Further, communication dated March 7, 2001 forwarded by the Talati-cum-Mantri, to the Deputy Collector, Jamnagar, which is on running page 263 of the compilation, makes it evident that notices were served on the landowners including the deceased. Thus, the averments made in the affidavit-in-reply filed by the responsible Government Servant read with the documents produced on record of the case, make it evident that the deceased, who was father of the petitioners, was served with the notice of inquiry, which was made under Rule 4 of the Rules. In fact, the petitioners have not averred in their petition that their father was not served with notice of inquiry which was to be

conducted under Rule 4 of the Rules. It is pertinent to note that the petitioners had submitted objections on July 10, 2001 pursuant to the notice issued to them under Section 4(1) of the Act but in those objections also, it is no where stated that deceased Raghaji was not served with the notice of inquiry under Rule 4 of the Rules. What is stated in paragraph 6 of the objections is that there was non-compliance of Rules 4 and 5 of the Rules while making inquiry, but it is not specifically stated that no notice was served on the deceased before holding inquiry under Rule 4 of the Rules. The record clinchingly establishes that the deceased was served with the notice of inquiry to be held under Rule 4 of the Rules, but he failed to avail of the same. Therefore, it is difficult to conclude that inquiry under Rule 4 of the Rules was conducted in violation of principles of natural justice. As observed earlier, the fact that inquiry was conducted under Rule 4 of the Rules is not in dispute and the fact that the report was forwarded by the Deputy Collector to the Collector, is also not in dispute. The additional affidavit filed by Mr.C.S.Upadhyay, Deputy Secretary, Revenue Department, on August 22, 2005 in instant petition would indicate that necessary report was forwarded by the Collector, Jamnagar, to the Deputy Secretary, Revenue Department, vide communication dated May 8, 2001. Therefore, this Court is of the opinion that belated plea raised by petitioners regarding non-service of notice of inquiry under Rule 4 of the Rules to their father, cannot be accepted. The averments made in the objections dated July 10, 2001 filed by the petitioners pursuant to the receipt of notice under Section 4(1) of the Act would indicate that they were knowing that there was an inquiry under Rule 4 of the Rules, but it is an admitted position that the petitioners did not challenge the same on the ground that inquiry was conducted in violation of principles of natural justices nor in the objections such a contention was raised. Therefore, the plea that inquiry under Rule 4 of the Rules was conducted in violation of principles of natural justice and, therefore, notification under Section 4 as well as declaration under Section 6 of the Act are liable to be set aside, has no substance and cannot be accepted.

**[21]** Even if it is assumed for the sake of argument that no notice of hearing was served to the deceased father of the petitioners under Rule 4 of the Rules, this Court finds that the petitioners have filed detailed objections dated July 10, 2001 before the competent authority pursuant to receipt of the notice under Section 4 of the Act raising all available contentions and, therefore, neither the deceased nor the petitioners were prejudiced by non-receipt of notice of inquiry under Rule 4 of the Rules. In Divisional Manager, Plantation Division, Andaman & Nicobar Islands , it was found by the Supreme Court that while holding domestic inquiry, principles of natural justice were not complied with. However, the plea based on the principles of natural justice has been negatived by the Supreme Court in following terms:

"17. The principles of natural justice cannot be put in a straitjacket formula. It must be viewed with flexibility. In a given case, where a deviation takes place as regards compliance with the principles of natural justice, the court may insist upon proof of prejudice before setting aside the order impugned before it. (See Bar Council of India v. High Court of Kerala).

19. In Karunakar this Court has clearly held that the employee must show sufferance of prejudice by non-obtaining a copy of the enquiry report."

Again in Pratapsang Naranji Jadeja , the Division Bench of this Court has held in paragraph 22 of the reported decision as under:

"22. In Babu Barkya Thakur v. State of Bombay (Now Maharashtra) and Ors., 1960 AIR(SC) 1203 the Supreme Court has held that in the matter of acquisition of land for a Company, a question as to public purpose has to be investigated under Section 5-A or Section 40. As inquiry under Section 5-A and inquiry under Section 40 pertain to almost same matters, absence of any inquiry under Section 40 need not be viewed seriously. Before the Government giving consent and executing an agreement with the Company, sufficient materials were placed before the Government in the form of report under Section 5-A and also report of the Committee constituted for that purpose. Therefore, we do not think that there was any procedural irregularity. The petitioners have not been prejudiced by the absence of any inquiry under Section 40 of the Act."

Further in Aligarh Muslim University & Ors., what is held by the Supreme Court in paragraph 24 of the reported decision reads as under:

"24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L.Tripathi v. State Bank of India Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade's Administrative Law (5th Edn., pp. 472-75), as follows: (SCC p.58, para 31).

[I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. ... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala v. S.K. Sharma. In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P."

Even if principle laid by the Division Bench of this Court in case of Pratapsang Naranji Jadeja is not taken into account in view of reference made to a larger Bench of the Supreme Court as reported in case of Swasthya Raksha Samiti Rati Chowk , the proposition of law as it emerges from above quoted decisions of the Supreme Court is that the principle that in addition to breach of natural justice, prejudice must also be proved, has been developed and accepted in several cases. As explained by the Supreme Court, not mere violation of principles of natural but de facto prejudice other than non-issue of notice has to be proved. Applying the principles laid down by the the Supreme Court to the facts of instant case, this Court finds that the petitioners have failed to point out as to which prejudice was caused to them by non-service of notice of inquiry which was held under Rule 4 of the Rules. The petitioners could not show prejudice caused to them because all available points were raised in the objections dated July 10, 2001, which were filed with the help of the advocate pursuant to receipt of notice under Section 4 of the Act.

**[22]** Thus, net result of the above discussion is that it could not be satisfactorily established by the petitioners that no inquiry under Rule 4 of the Rules was conducted by the competent authority or that principles of natural justice were violated while making inquiry under Rule 4 of the Rules or in the alternative, that any prejudice was caused to them because of non-service of notice of inquiry to their father, which was to be made under Rule 4 of the Rules. Therefore, the first contention based on breach of Rule 4 of the Rules is liable to be rejected and is hereby rejected.

**[23]** The plea that the deceased was resident of Village Gagva and notice could not have been sent to him at Village Moti Khavdi inviting him for negotiations by the company or affording hearing to him under Rule 4 of the Rules and, therefore, the petitioners are entitled to reliefs claimed in the petition, has no merits. It is relevant to notice that the petitioners themselves have produced notice issued by the competent authority under Section 9 of the Act. The same was served upon them at Village Moti Khavdi. Therefore, false averments have been made by the petitioners that they were not residents of Moti Khavdi. Whether the company had made efforts for negotiations or not, is a matter for consideration by the competent authority while making inquiry under Rule 4 of the Rules. Moreover, the fact that the respondent No.4 company had offered Rs.20,500=00 per Vigha for non-irrigated land and Rs.38,000=00 per Vigha for

irrigated land, is not in dispute at all at any stage of the proceedings. It is not the case of the petitioners that the deceased would have accepted the offer if notice had been issued to him and, therefore, the competent authority was not justified in concluding that negotiations had failed. The report of inquiry under Rule 4 of the Rules, which is on running Page 252 of the compilation, makes it evident that the six matters specified in Rule 4(1) of the Rules were taken into consideration by the competent authority before forwarding report dated April 12, 2001 to the Deputy Collector, Jamnagar. The competent authority had also taken into consideration the report dated April 3, 2001 forwarded by the District Agricultural Officer. A glance at the report makes it evident that six matters namely; (1) that the company had made its best endeavour to find out lands in the locality suitable for the purpose of acquisition; (2) the company had made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts had failed; (3) the lands proposed to be acquired are suitable for the purpose; (4) the area of land proposed to be acquired is not excessive; (5) the company is in a position to utilize the land expeditiously; and, (6) that the land proposed to be acquired is agricultural land, but no alternative suitable site could be found so as to avoid acquisition of that land. It further makes evident that as the land proposed to be acquired was agricultural land, the District Agricultural Officer was consulted as required by provisions of Rule 4(2)(i) of the Rules. There is no manner of doubt that the report dated April 12, 2001 is based on subjective satisfaction of the competent authority and unless a good ground is made, the Court exercising writ jurisdiction would not be justified in interfering with the same as if it is exercising appellate powers. The Court while entertaining the petition under Article 226 of the Constitution, is concerned with the question whether the correct decision-making process was adopted or not and not with the correctness of the decision itself. Therefore, it is wrong to contend that acquisition proceedings are liable to fail for want of compliance of Rule 4 of the Rules.

**[24]** The contention that hearing under Section 5A of the Act was not given to the petitioners and, therefore, the declaration made under Section 6 of the Act is liable to be quashed, has also no substance. Mr.A.B.Rathod, Deputy Collector, Jamnagar, who has filed affidavit-in-reply in instant petition, has pointed out that notices dated June 16, 2001 were issued to the petitioners and other affected persons under Section 4(1) of the Act by which the petitioners and other affected persons were called upon to file their objections on or before July 17, 2001 and to appear in-person or through the advocate if so desired on July 21, 2001 to make necessary representation. The affidavit-in-reply filed by Mr.Rathod further makes it clear that after receipt of notice dated June 16, 2001, the petitioners had submitted their reply/objections on July 10, 2001. The learned Advocate General has produced original record of the Office of the Deputy Collector for perusal of the Court, which indicates that the petitioners had filed

their objections dated July 10, 2001 through their advocate Mr.Narendra Vyas. Though the petitioners have filed affidavit-in-rejoinder to the affidavit filed by Mr.A.B.Rathod, Deputy Collector, Jamnagar, in instant petition, the claim advanced by Mr.Rathod that the petitioners had submitted their objections on July 10, 2001 is not denied. Further Rojkam dated July 23, 2001, which is on running page 240 of the compilation, makes it evident that objections were submitted by the petitioners on July 10, 2001 and that Mr.N.V.Vyas, who was engaged as advocate by the petitioners, had remained present at the time of hearing when the inquiry was conducted under Section 5A of the Act. Under the circumstances, this Court is of the opinion that more than sufficient opportunity was afforded to the petitioners while conducting the inquiry under Section 5A of the Act. Section 6 declaration, therefore, cannot be quashed on the ground that no inquiry under Section 5A of the Act was conducted by the competent authority.

**[25]** The contention that the acquisition is for profits of the company and, therefore, the same should be set aside, is merely stated to be rejected. What is mentioned by Mr.Baxi in his affidavit-in-reply, which is filed on behalf of the respondent No.4-company, is that the company has set up its refinery in Jamnagar area and for the said purpose it has acquired only that much land as was required. It is further explained that respondent-company being a corporate body cannot afford to waste money after unnecessary lands as it is bound to increase its overhead expenses which would, in turn, diminish profits. It is further pointed out that the respondent No.4 is conservative in acquisition of lands of private parties and acquisition of lands in instant case should not be regarded as excessive. A fair reading of the affidavit makes it evident that those averments have been made to meet the allegations of the petitioners that the acquisition of the lands is excessive and it is no where stated that acquisition is for profits. Even otherwise, it is rightly contended by the learned counsel of the respondent No.4 that once the land is acquired for the company, the same is subject to restrictions placed by Section 44A of the Act. The land acquired by the company cannot be transferred, assigned, alienated, mortgaged, etc. without previous consent of the Government. Under the circumstances, the plea that the acquisition is for profits of the company and, therefore, it should be set aside, has no substance.

**[26]** Similarly, the plea that the acquisition is for the officers of the company, but not for the workmen of the company and, therefore, notification under Section 4 of the Act as well as under Section 6 of the Act should be set aside, cannot be accepted. The word 'workmen' is not defined in the Land Acquisition Act, 1894. The Acquisition Act was passed by the Legislature for the purpose of compulsorily acquiring any land when it is required for a public purpose or for companies whereas the Industrial Disputes Act, 1947 was enacted roughly after fifty-three yeas, to promote industrial peace, legitimate trade union activities and discouragement of improper or unfair employer

practices or victimization of workers. Words are after all used merely as a vehicle to convey the idea of the speaker or the writer and the words naturally, therefore, should be construed as to fit in with the idea which emerges on a consideration of the entire context. The context, in which a word conveying different shades of meanings is used, is of importance in determining the precise sense which fits in with the context as intended to be conveyed by the author. In the year 1894, it could not have been anticipated by the Legislature that in the year 1947, another act namely The Industrial Disputes Act, 1947, would be enacted defining the word 'workmen' in a restricted and narrow sense. Where a word is used simpliciter unless there is something else in the context or other parts of the Section, which suggests a limited meaning, a word apparently used in the general sense, should not be understood as limited to a particular meaning. General or comprehensive words should receive their full and natural meaning unless they are restrictive in their intendment. The word 'workmen' used in Section 40(1)(a)of the Acquisition Act is both general and comprehensive and, therefore, it should receive its full and natural meaning. Therefore, in the context of Section 40 of the Act, the word 'workmen' would mean all those who all employed by the company. It is not necessary that terms and expressions not defined in an earlier enactment shall have the same meaning as given to them in a later enactment, in a particular context. It is well settled that each enactment must be construed in that respect according to its own subject matter and its own terms. Therefore, the narrow interpretation of the word 'workmen' sought to be canvassed by the learned counsel of the petitioners cannot be accepted. Even otherwise, it is rightly pointed out by the learned Advocate General that the provisions of Section 40(1)(a) of the Act would be attracted to the facts of the case and, therefore, the land acquisition proceedings would not fall to the ground if the acquisition is also for workmen of the company. Having regard to the object of acquisition of the land for a company as mentioned in Section 40 of the Act, it would be reasonable to hold that the provisions of Section 40(1)(a) of the Act can be pressed into service to provide housing colony for all those who work for the company. The narrow interpretation which is sought to be canvassed by the learned counsel of the petitioners need not be accepted by the Court. Therefore, the acquisition of the land cannot be set aside on the ground that it is also for the officers of the company, but not for the workmen employed by the company.

**[27]** Similarly, the plea that the acquisition proceedings are not initiated for genuine need of the company and, therefore, they should be set aside, is devoid of merits. This question has been gone into detail by the competent authority while making inquiry under Rule 4 of the Rules which is quite evident from the contents of report dated April 12, 2001 forwarded by the Deputy Collector, Jamnagar, to the Collector, Jamnagar, and the report dated May 8, 2001 forwarded by the Collector, Jamnagar, to the Government and this Court cannot interfere with the same unless good grounds are made out. Even

otherwise, the company, by filing detailed reply of Mr.Baxi, has pointed out that in view of its increased capacity of production, it is in need of more lands for erecting dwelling houses for its workmen and providing amenities to them. It is also evident from the reply that as on the date of filing reply, 2000 employees were staying in rented premises located in Jamnagar City and Moti Khavdi. Therefore, it is difficult to conclude that need to acquire the lands is not genuine.

**[28]** This brings the Court to consider the question whether instant petition is barred by the principles of delay and laches. While deciding this issue, it would be relevant to notice certain dates. The record of the case indicates that notification under Section 4 of the Act was published in Government Gazette on May 14, 2001 and public notice was published in "Sandesh" and "Indian Express" dailies on July 2, 2001 and declaration under Section 6 of the Act was published on April 9, 2002. The record further shows that before declaration under Section 6 of the Act, the company had furnished bank guarantee of Rs.26,34,837=00 on September 8, 2001 and also executed an agreement as contemplated by Section 41 of the Act on October 5, 2001, after which notices under Sections 9 were issued on July 31, 2002.

**[29]** Perusal of the petition indicates that the petition was affirmed by the petitioner No.5 on behalf of himself and as power of attorney holder of rest of the petitioners on January 15, 2003 and was moved for admission hearing before the Court on January 24, 2003. Thus, there is no manner of doubt that the petition was filed after a period of more than seven months from the date of publication of declaration under Section 6 of the Act, and not immediately.

**[30]** It is well settled under Article 226 of the Constitution, power of the High Court to issue an appropriate writ is discretionary. The relief under Article 226 of the Constitution cannot be claimed as a matter of right. One of the grounds for refusing the relief under Article 226 is that the petitioner has been guilty of delay and laches. It is imperative if the petitioner wants to invoke extraordinary remedy available under Article 226 that he should come to the Court at the earliest reasonable opportunity. Inordinate delay in making motion for a writ will be an adequate ground for refusing to exercise the discretion. It is essential that the persons, who are aggrieved by any executive action or order of the Government should approach the High Court with utmost expedition. In an appropriate case, High Court may not exercise its discretion and may refuse to grant relief if there is such negligence or omission on the part of the petitioner to assert his right as taken in conjunction with the lapse of time and other circumstance, cause prejudice to the other party.

**[31]** In Reliance Petroleum Limited, notification under Section 4 dated February 15, 1993 was issued on March 11, 1993. After inquiry under Section 5A of the Act,

declaration under Section 6 was published on May 18, 1994. It may be stated that the Supreme Court proceeded on the assumption that there was no strict compliance of the requirements. Thereafter, individual notices under Section 9 were issued on August 12, 1994. In response to the notices under Section 9, claims were filed by the landowners including respondent Nos.1 to 3 on September 5, 1994. Apart from that on September 7, 1994, a letter was addressed to the Land Acquisition Officer on behalf of 89 individuals which included respondent Nos.1 to 3 informing that the claims were filed on behalf of the 89 individuals. When the matter was pending before the Land Acquisition Officer and before an award was passed, respondent Nos.1 to 3 for themselves and on behalf of 89 persons addressed a letter on October 25, 1994 stating that they had no objection to the acquisition of land, but they were demanding only more compensation. On December 20, 1994, Special Civil Application No.13525 of 1994 was filed by respondent Nos.1 to 4 on behalf of 89 persons challenging the land acquisition proceedings. The plea was raised on behalf of the original respondents that the petition was barred by the principles of delay and laches. While allowing the appeal filed by the appellant, the Supreme Court has held that 'the High Court was not justified in entertaining the writ petition and also in exercising the discretionary jurisdiction to quash the Section 4(1) notification, Section 6 declaration and award made under the Land Acquisition Act'.

> Again, in Pratapsang Naranji Jadeja , Section 4 notification was issued on January 2, 1996. The petitioners in that case were served with the notices regarding inquiry under Rule 4 as early as on November 5, 1996. Notification under Section 6 of the Act was published on October 30, 1996 and the writ petition was filed challenging notifications issued under the Act on February 19, 1997. The Division Bench of this Court has held that there was delay on the part of the petitioners in approaching the Court and they were disentitled to the reliefs claimed in the petition.

**[32]** Applying the principles laid down in the above quoted decisions to the facts of instant case, this Court finds that the petitioners did not approach the Court immediately after publication of declaration under section 6 of the Act on April 9, 2002. Before that the Company had given guarantee of Rs.26,38,837=00 to the Government on September 8, 2001 and also executed the agreement as contemplated by Section 41 of the Act on October 5, 2001. The delay caused in filing the petition is not explained by the petitioners at all. Under the circumstances, this Court is inclined to accept the contention raised by the learned Advocate General for the State that instant petition is filed only after stay was granted in Special Civil Application No.8550 of 2002, which was moved first in point of time. The petitioners have not been able to substantiate any of the contentions raised by them. The acquisition is for providing accommodation to the employees of the company and, therefore, only purpose of filing

the petition appears to seek higher amount of compensation from the respondent No.4. In view of delay and laches also on the part of the petitioners in approaching the Court, the petition is liable to be dismissed.

**[33]** The net result of the above discussion is that the Court does not find any merit in any of the contentions raised by the petitioners. The petition is, therefore, liable to be dismissed.

For the foregoing reasons, the petition fails, and is dismissed. Notice is discharged. There shall be no orders as to costs.

**[34]** At this stage, Mr.Munshi, learned counsel of the petitioners, prays that interim relief granted earlier be directed to continue for a reasonable period to enable the petitioners to approach higher forum. This Court has heard the learned counsels of the parties. Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if interim relief is directed to continue up to September 23, 2005 to enable the petitioners to approach higher forum. Accordingly, interim relief granted earlier is directed to continue till September 23, 2005.