the order passed adversely to the applicant in such an application as the same is not covered by section 30 of the Act. The Appellate Assistant Commissioner was, therefore, right in the view that no appeal lay to him."

We would accordingly answer the question of law referred in the negative, in favour of the revenue, and against the assessee.

K. S. K.

LETTERS PATENT APPEAL.

Before Mehar Singh, C.J. and R. S. Narula, J.

RAJA RAM AND OTHERS,—*Appellants.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 283 of 1969.

February 26, 1970.

Land Acquisition Act (I of 1894 as amended by the Punjab Act No. XLVII of 1956)—Sections 3(c), 4, 6, 7 and 17—Valid declaration for acquisition of land for public purpose—Pre-requisites of—Stated—State—Whether can acquire land for a juristic person which is neither a Company nor a local authority—Acquisition of land for a Company when no part of compensation payable from public funds—Procedure in Part VII—Whether has to be followed—Declaration under section 6—Whether conclusive—Taking possession under section 17 of waste or arable land—Decision of the Government as to—Notice to the landowner—Whether essential—Food Corporation of India—Whether a "Company", within the meaning of section 3(e) or a department of the Government—Constitution of India (1950)—Article 226—Exercise of discretion under—Conduct of writ-petitioner—Whether relevant—No objection regarding the conduct raised before the single Judge—Such objection—Whether can be raised in Letters Patent Appeal—Words and phrases—Arable land—Meaning of.

Held, that a valid declaration under section 4 or 6 of the Land Acquisition Act, can be made if the land is needed for a public purpose, i.e., when the entire compensation for the acquisition of the land has to be paid from public revenues or some fund controlled or managed by a local authority. When the land is sought to be acquired for a "Company" and the compensation, therefore, is paid at least partly out of public revenues or some fund controlled or managed by a local authority, in such a case also the acquisition will be for a public purpose. A legal declaration can also be made if

the land is required for a "Company", as defined in section 3(e) of the Act and the entire compensation for acquisition of the land is paid by such Company, even if no part thereof is paid from public revenues or from some fund controlled or managed by a local authority. However, the State cannot acquire land for an ordinary individual or for a juristic person which is neither a "Company" within the meaning of section 3(e) of the Act, nor a local authority. (Para 26)

Held, that it is not necessary to resort to the procedure prescribed under Part VII of the Act for acquiring land needed for public purpose when the entire compensation is to be paid from public revenues or some fund controlled or managed by local authority. That procedure may also be not followed when the land is sought to be acquired for a "Company" and the compensation, therefore, is paid at least partly out of public revenues or some fund controlled or managed by a local authority. In such a case the acquisition will be for a public purpose. But any acquisition made for a Company for which no part of the compensation is paid from public funds will be invalid if the procedure prescribed in part VII of the Act is not followed. The acquisition without following the said procedure will also be invalid if the land is sought to be acquired for a "private Company" for any purpose other than that mentioned in section 40(1)(a) of the Act.

(Para 26)

Held, that once a declaration under section 6(1) of the Act is made, it would be conclusive evidence that the land is needed for a public purpose or for a Company as the case may be, but this would not be so in a case where the declaration has been made in mere colourable exercise of the power conferred on the appropriate Government under section 6. In such a case, it will be open to the Court to hold that in the eye of law no declaration has been made under section 6 of the Act.

(Para 26)

Held, that when the State Government takes a decision for taking possession of waste or arable land under section 17 of the Act, there is no provision in the Act which requires a show-cause notice to be given to the landowner before taking such decision. Principles of natural justice cannot be invoked for this purpose as the decision about a particular piece of land being waste or arable, or not, can hardly ever be termed as quasi-judicial. The purpose of invoking the emergency provisions would be completely negatived if it were to be held that opportunity of hearing is necessary before making the requisite declaration. Sufficient safeguard is available to protect the interests of a landowner in his being able to question the legal aspect of the decision of the State Government in regard to his land being waste or arable, or not, in appropriate proceedings in a Court of law, even after the acquisition has been made.

(Para 11)

Held, that in order to bring a juristic or an artificial person within the four corners of "Company", as defined under section 3(e) of the Act, two conditions must be fulfilled viz., : it should be a Company as understood in

ordinary law and (ii) it should be registered under any of the statutes mentioned in section 3(e) of the Act or incorporated by an Indian law. The Food Corporation of India has no doubt been incorporated by Food Corporations Act, 1964, which is an Indian law, but it cannot be described as a "Company" unless it is composed of a fluctuating body of persons, which body may conveniently be described as (i) association of individuals, and (ii) its members hold shares in it, which they can freely transfer without consulting the other shareholders. The Food Corporation does not satisfy any of those two ingredients of a Company. Hence it is not a Company within the meaning of section 3(e) of Land Acquisition Act.

(Paras 17 and 20)

Held, that the Food Corporation of India cannot be described as a department of Central Government in spite of the fact that it is financed exclusively by the Central Government and is run under the management and control of that Government. The Corporation is a separate juristic person than the Central Government. Even if the Corporation is held to be a "Central Government undertaking" or a venture of the Central Government, it would not thereby become the Government itself.

(Paras 13 and 22)

Held, that the conduct of a writ-petitioner is a relevant consideration for the exercise of discretion under Article 226 of the Constitution of India. However, when objection regarding such conduct is not raised before the learned single Judge hearing the writ-petition, who could have been persuaded to decline to go into the merits of the petition, such an objection cannot be allowed to be raised at the appellate stage in Letters Patent appeal to defeat the claim of the appellant for safeguarding his fundamental rights enshrined in Articles 19(1)(f) and 31(1) of the Constitution.

(Para 30)

Held, that the land which is capable of being cultivated, is classed as arable within the meaning of section 17 of the Act, even if it is not being cultivated. It cannot be laid down as a universal or general proposition of law that land within municipal limits cannot be arable

(Paras 7 and 8)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment passed by the Hon'ble Mr. Justice H. R. Sodhi on 28th May, 1969, in Civil Writ No. 813 of 1969.

J. S. CHAWLA, ADVOCATE, for the appellants.

M. R. SHARMA, DEPUTY ADVOCATE-GENERAL (PUNJAB), for the respondents.

JUDGMENT

NARULA, J.—The facts giving rise to this Letters Patent Appeal against the judgment of a learned Single Judge of this Court dismissing the writ petition of the appellants and upholding the impugned order of acquisition of their land are as follows :—

(2) Nine Biswas of the disputed land situate within the municipal area of Morinda, tahsil and district Ropar, came to be owned by Raja Ram appellant No. 1 as a result of a decree in a partition suit to which his sons, appellants Nos. 2 and 3 were parties. Copies of the judgment and decree of the civil court are Annexures 'A' and 'B' to the writ petition respectively. Notification, dated December 17, 1968, published in the Punjab Government Gazette (Extraordinary), dated December 17, 1968, at page 1025 (Annexure 'D' to the writ petition), was issued under section 4 read with section 17 of the Land Acquisition Act (I of 1894) (hereinafter called the Act). The notification related to fifteen different pieces of land out of which the land in dispute comprised in Khasra No. 3759 was mentioned at item No. 2. The body of the notification which was issued during the President's rule in Punjab was in the following terms:—

> "Whereas it appears to the President of India that the land is likely to be needed by Government, at public expense, for a public purpose, namely, for the construction of godowns for storage of foodgrains, at Morinda, it is hereby notified that the land in the locality described below is likely to be required for the above purpose.
>
> The notification is made under the provisions of section 4 of the Land Acquisition Act, 1894, to all whom it may concern.
>
> In exercise of the powers conferred by the aforesaid section, the President of India is pleased to authorise the Collector, district Ropar, with such other officers and officials as may be considered necessary for the purpose by him to enter upon and survey the land in the locality described in the specification below and to do all other acts required or permitted by that section.

Further in exercise of the powers conferred by the said Act, the President of India is pleased to direct that action under section 17 shall be taken in this case on the grounds of urgency and provisions of section 5(A) shall not apply in regard to this acquisition."

On the same day, another notification (published at pages 1025 to 1028 of the same Gazette) was issued by the President of India under section 6 and 7 read with section 17(2)(c) of the Act in the following terms:—

"Whereas the President of India is satisfied that land specified below is needed by Government at the public expense, for a public purpose, namely, for the construction of godowns for storage of foodgrains at Morinda, it is hereby declared that the land described in the specification below is required for the aforesaid purpose.

This declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894, to all whom, it may concern and under the provisions of section 7 of the said Act, the Collector, district Ropar, is hereby directed to take order for the acquisition of the said land.

Plans of the land may be inspected in the office of the Collector of district Ropar.

In view of the urgency of the acquisition, President of India in exercise of the powers conferred by section 17(2)(c) of the said Act, is further pleased to direct that the Collector, district Ropar, shall proceed to take possession of the land herein specified in accordance therewith."

The land of the appellants was entered in the schedule attached to the notification at item No. 2. On March 17, 1969, appellant No. 1 submitted objections against the acquisition (copy thereof is Annexure 'E' to the writ petition). It was claimed therein that appellant No. 1 had after getting the land in dispute under the decree

of the civil Court, and before the issue of the notification under section 4 of the Act constructed on the land Vishav Karma Mandir and Dharamshāla, and, therefore, the same could not be acquired under the law. Reference was made to the Khasra *girdawari* in which existence of the Mandir had been mentioned. Not having been able to obtain any redress on the objections, the appellants filed Civil Writ 813 of 1969, in this Court in April, 1969, impugning the acquisition proceedings on various grounds.

(3) In reply to the allegation regarding the existence of a Mandir and Dharamshala on the land in dispute, the Sub-Divisional Officer (Civil), Collector under the Act, swore in his affidavit, dated April 16, 1969, that the Khasra *girdawari* for Kharif, 1968 (copy Annexure 'C' to the writ petition) seemed to have been interpolated by the Patwari concerned, the interpolation was evident from the original record, the application of the Food Corporation of India for correcting the *girdawari* was pending, and that in all previous harvests, the land had been shown as unirrigated, cultivated or uncultivated. In paragraph 7 of his return, he added that no mention of any Mandir is made in report, dated January 2, 1969, regarding the transfer of physical possession by the Naib Tahsildar. He also referred to various other documents of which copies were filed with his return to prove that the building of the alleged Mandir had been constructed entirely after the issue of the notification under section 4 of the Act "in order to take undue advantage of the law". Regarding the allegation of the appellants about their having come to know of the notification for acquisition of the land only in March, 1969, it was stated by the Collector that the appellants had been made aware of the notification in the very first instance, and indeed physical possession of the entire area of the land in dispute was taken on January 2, 1969, by the Food Corporation of India, when no temple or place of religious worship existed at the spot. The Collector admitted the receipt of objections from the appellants on March 17, 1969, his visit to the spot on March 19, 1969, and his having submitted report (Annexure 'E' to his return) regarding the same. He also made it clear that on March 17, 1969, the appellants attended his office in response to a notice issued to them under section 9 of the Act. The Food Corporation of India was stated to have started construction on the plot on March 26, 1969. Since the appellants' claim about the existence of a Mandir on the land prior to the issue of the notification under section 4 of the Act was not pressed by the learned counsel for the appellants, and was indeed given up before

us, I am not referring to the annexures to the Collector's return which appear to have been filed only in order to negative the said claim of the appellants.

(4) The Director, Food and Supplies, and Joint Secretary to Government Punjab, filed a separate return on behalf of respondent No. 1, the State of Punjab. On the receipt of copies of the written statement, the appellants by their application, dated April 19, 1969, sought permission of the Court to file their replication of that date. Leave having been granted, the replication was taken on the record of the writ petition. It was claimed therein that the plan of the building of Mandir had been sanctioned by the resolution of the Municipal Committee, Morinda, dated July 12, 1967, and that no interpolation had been made in the Khasra *girdawari* by the revenue Patwari. It was denied that the land was either waste or arable as pucca building was alleged to have been constructed on it after getting its proposed construction plan duly sanctioned from the Municipal Committee. In paragraph 8 of the replication, objection was taken to no mention of the Food Corporation of India having been made in the notification under section 4. It was claimed that the appellants had for the first time come to know from the respondents' written statement that the land was in fact being acquired for the Food Corporation of India (hereinafter referred to as the Corporation), and it was claimed that the impugned notification was bad in law on account of the non-disclosure of the fact of the land being required for the Corporation. It was then stated that the entire money was being spent by the Corporation, and no part of it was coming out of the Consolidated Fund of the State, and, therefore, the acquisition proceedings were invalid. Objection to the invocation of section 17 of the Act was reiterated.

(5) The learned Single Judge while dismissing the writ petition on May 28, 1969, recorded the following findings in his judgment:—

(i) that when possession of the land in dispute was taken on January 2, 1969, by the Food Corporation of India, the structure which is most discribed as Vishav Karma Mandir was not in existence, and the appellant had tried to set up the construction after the land had been acquired;

(ii) that at the time of issue of the notification under section 4 of the Act, the land in dispute was arable, to which the emergency provisions contained in sub-sections (1) and (4) of section 17 could be applied;

(iii) that the appropriate Government was the best judge of the emergency and no allegation had been made and no proof given about the emergency provisions having been invoked *mala fide*. Even otherwise, the purpose of storage and preservation of foodgrains was a matter of top priority and great urgency for the Government when the country was in the grip of food problem;

(iv) that the contention of the appellants about the illegality in issuing a composite notification under sections 4, 6 and 17(4) of the Act was devoid of force, and in any case, the appellants had not been able to show how any injustice, much less manifest injustice, had been caused to them by the issue of the relevant notification on the same date;

(v) that sections 17(1) and 17(4) of the Act are not *ultra vires* Article 14 of the Constitution, as they do not invest the Government with any arbitrary or unbridled power, inasmuch as the expression "waste or arable land" has a well-defined meaning and no executive authority can misuse those provisions by giving a different meaning to that expression; and

(vi) that the provisions of part VII of the Act relating to the acquisition of land for companies were not applicable to this case as the Food Corporation of India was not a company within the meaning of that expression given in section 3(e) of the Act, though there was no manner of doubt about the fact that the land in dispute had in fact been acquired for the Food Corporation of India.

(6) In this appeal against that decision, Mr. J. S. Chawla, the learned counsel for the appellants, has questioned the correctness of the findings of the learned Single Judge only on points Nos. (ii)

and (vi) above, and has frankly conceded that he is not in a position to challenge the correctness of the findings on any of the other points.

(7) Clause (c) of sub-section (2) of section 17 of the Act (as amended by Punjab Act No. 47 of 1956 in its application to the State of Punjab) authorises the Collector to enter upon and take possession of waste or arable land whenever such land is required for a public purpose, which, in the opinion of the State Government, is of urgent importance. Whether a particular piece of land is, in fact, waste or arable, or not, is ordinarily a question of fact, though Courts are not prohibited from arriving at their own conclusion regarding any particular land being or not being waste or arable on the basis of admitted or proved facts. Mr. Chawla wants us to hold that the appellants' land was neither waste nor arable as (i) the Khasra Girdawari in respect of that land for Kharif 1968 (annexure 'C' to the writ petition) contains the following remark:—

"Ghair Mumkin compound wall, house, Mandir and Dharamsala 0-9" ;

and as (ii) the land is admittedly situate within the limits of Municipal Committee. The first contention of the learned counsel is wholly devoid of force. It does not lie in the mouth of the appellant to claim the existence of the constructions in question on the land in dispute for the purpose of supporting his argument under this head when he has expressly conceded that he does not question the finding of the learned Single Judge to the effect that no such structures existed on the land at the time of the issue of the notification under section 4 of the Act. We are inclined to agree with the submission made by the learned counsel for the respondents in this respect that the above quoted entry in the *qirdawari* has been subsequently interpolated therein. The *khasra girdawari* in question (annexure 'C' to the writ petition) describes the 9 Biswas of land in question as "Barani". It was shown to be vacant in Kharif 1964 but under wheat during Rabi 1965 when it is shown to have become Chahi. Half of the land is shown under Chari crop in Kharif 1965 and the whole of it is shown to have been under wheat crop in Rabi 1967. It was shown as vacant in the *girdawari* for Kharif 1967 and Rabi 1968. In the face of this evidence produced by the appellants themselves, it cannot, in our opinion, be successfully argued that the land in question was not

capable of being cultivated. The controversy as to the meaning of the expression "arable" has since been set at rest by their Lordships of the Supreme Court in *Ishwarlal Girdharlal Joshi etc.* v. *State of Gujarat and another* (1), wherein it has been held that even if land is not under actual cultivation but is capable of being cultivated it is to be classed as arable within the meaning of section 17 of the Act.

(8) In support of his second contention on the point, Mr. Chawla referred to the judgment of a learned Single Judge of the Andhra Pradesh High Court in *Mallaiah and others* v. *The Government of Andhra Pradesh and others* (2). In that case it was held that the land, which was situate in the heart of a town bounded by a cinema house on one side and choultry on the other and abutted on the main road, was essentially fit for construction of dwelling houses and was, therefore, fit for habitation and could not be called waste or arable. In *Kanwar Chandra Singh and others* v. *State of Rajasthan and another* (3), it was held that merely because a plot of land might have been intended in future for constructing a building thereon did not signify that the land was not waste or arable. It was further held that section 17(1) makes no distinction between lands in a village and building sites in a town area and the acquisition of land is possible even in a town area provided it answers to the description of waste or arable land as given in that section. As already stated, the question of land being actually waste or arable, or not, has to be decided on the facts of a given case. It cannot be laid down as a universal or general proposition of law that land within municipal limits cannot be arable. The land in the present case is not shown to have been situated in the heart of the municipal area, nor is it shown to have been surrounded by any such public buildings as a choultry or a cinema house. On the facts of the present case, we have no hesitation in upholding the finding of the learned Single Judge to the effect that the land in question was arable at the time of issue of the notification under section 4 of the Act.

(9) It was next contended by the counsel that the Government in the instant case does not appear to have applied its mind to the question of urgency and that reference to the provisions of section 17 of the Act appears to have been made in the impugned notifications as a

(1) A.I.R. 1968 S.C. 870.
(2) 1969 Andhra Weekly Reporter 377.
(3) I.L.R. 1961 Raj. 486.

matter of routine. Mr. Chawla relied on the judgment of Krishna Rao, J., in *S. Madhusudhan Reddy and another* v. *The State of Andhra Pradesh and another* (4), in order to urge that though the opinion or the decision of the Government as regards urgency is an administrative matter, nevertheless, when such an action on the part of the Government is questioned before a Court, it is duty of the Government to place relevant material before the Court so that the Court may be in a position to scrutinise whether any opinion at all was arrived at by the Collector and if so, whether it was based on relevant factors, though it may not be open to the Court to come to its own conclusion as if it is a quasi-judicial matter. In the same connection, reference was made to the Full Bench judgment of this Court in *The Printers House (P) Ltd.* v. *Misri Lal Dalip Singh* (5), and to the D. B. judgment of the Gujrat High Court in *Ishwar Lal Girdhar Lal* v. *The State of Gujrat and another* (6). There is no quarrel with the propositions of law laid down in any of those cases. In the case before us it has been made clear in paragraph 8 of the rejoinder of the District Manager, Food Corporation of India, dated May 3, 1969, that the Punjab Government took action for acquisition of the disputed land at the instance of the Government of India. Reference has been made in the above-mentioned rejoinder to demi-official letter, dated October 15, 1968, from the Food Secretary, Government of India, to the Chief Secretary, Government of Punjab, of which communication a copy has been attached as annexure II to the above-said rejoinder It is stated in the said communication, *inter alia,* as follows:—

> "There has been considerable difficulty in the past in the acquisition of land for this purpose (to undertake a crash programme of construction of godowns for storage of foodgrains). I will be too glad if the State Government could make available to the Food Corporation of India land belonging to the State Government or to a public body so that construction work is taken in hand in anticipation of all formalities like payment of the price of land ————. It will be necessary to acquire the land under emergency provisions of the Land Acquisition Act and the proceedings completed in the quickest possible time. I have no doubt that you will issue necessary instructions in this regard."

(4) 1970 Andhra Weekly Reporter 43.
(5) I.L.R. (1970) 1 Pb. & Hr. 76=A.I.R. 1970 Pb. & Hr. 1.
(6) I.L.R. 1967 Guj. 620.

(10) The State Government obviously invoked the emergency provisions after applying its mind to the situation and after duly considering the suggestion made by the Central Government. We are, therefore, unable to agree with Mr. Chawla that the State Government did not at all apply its mind to this aspect of the case and that the Collector concerned made reference to section 17 as a matter of routine.

(11) The last submission of the counsel on this issue was that inasmuch as the declaration of the land being waste or arable was likely to deprive the appellants of their valuable right under section 5-A of the Act of their objecting to the proposed acquisition, no decision in respect of the land being or not being waste or arable could be taken by the appropriate Government without hearing the landowner and without affording him an opportunity to show cause against the proposed declaration. This submission has also not appealed to us. No provision in the Act requires such a hearing. Principles of natural justice cannot be invoked for this purpose as the decision about a particular piece of land being waste or arable, or not, can hardly ever be termed as quasi-judicial. The purpose of invoking the emergency provisions would be completely negatived if it were to be held that opportunity of hearing is necessary before making the requisite declaration. Sufficient safeguard is available to protect the interests of a landowner in his being able to question the legal aspect of the decision of the State Government in regard to his land being waste or arable, or not, in appropriate proceedings in a Court of law, even after the acquisition has been made. We are, therefore, unable to hold that it is either practicable or obligatory on the part of the Government to give a hearing to a landowner before declaring his land, which is sought to be acquired to be waste or arable, for the purposes of invoking section 17 of the Act.

(12) For the foregoing reasons, we repel all the arguments advanced by Mr. Chawla in connection with point No. 2 and uphold the finding of the learned Single Judge in respect thereof.

(13) This takes me to the 6th point decided by the learned Single Judge. The first attack is directed against that part of the learned Single Judge's judgment wherein it has been held that the Food Corporation of India is a Department of the Central Government. We find force in the argument of Mr. Chawla to the effect that the

Food Corporation of India constituted under the *Food Corporations* Act, 1964 (*hereinafter referred to as the Food Act*) cannot in view of the provisions of section 42 of that Act and the judgment of their Lordships of the Supreme Court in the *Andhra Pradesh State Road Transport Corporation* v. *The Income-tax Officer* (7), be held to be a department of the Central Government. Section 42 of the Food Act provides that the Food Corporation shall be deemed to be a company within the meaning of the Income-tax Act, 1961, and is liable to pay tax accordingly on its income, profits and gains. In the case of the *Andhra Pradesh State Road Transport Corporation* (7), the Supreme Court held that the trading activity carried on by that Corporation was not a trading activity carried on by the State departmentally nor was it a trading activity carried on by the State through its agents appointed in that behalf. A State cannot be subjected to income-tax. In a recent unreported judgment of their Lordships of the Supreme Court in *Dr. S. L. Aggarwal* v. *The General Manager, Hindustan Steel Limited* (8), one of the questions, which arose for decision was, whether the employees of a corporation, such as the Hindustan Steel Limited, could be held to be in the civil employ of the Union of India and, therefore, entitled to the protection of Article 311 of the Constitution. On behalf of the employee it was contended that since the Hindustan Steel Limited was entirely financed by the Government and its management was directly the responsibility of the President, the post held by him was virtually under the Government of India. The contention made to the effect that the Hindustan Steel Limited was a department of the Government was negatived by their Lordships. It was held that the Hindustan Steel Limited has its independent existence and by law, relating to corporations, it is distinct even from its members. In the same connection reference was made by Mr. Chawala to the judgment of a learned Single Judge of the Kerala High Court in *Kuruvilla* v. *Accommodation Controller and others* (9). The question which arose for decision in that case was whether the Chairman of the Cardamom Board was an officer of the Central Government or not. It was held that he was not such an officer merely because he had been appointed by the Central Government or because the terms and conditions of his service were fixed by the Central Government. The judgment of the Kerala High Court does not appear to be directly relevant for deciding the issue before

(7) A.I.R. 1964 S.C. 1486.

(8) C.A. No. 524 of 1967, decided on 19th December, 1969.

(9) 1969 Rent Control Reporter 663.

us, but in view of what has already been stated, we have no hesitation in holding that the Food Corporation of India cannot be described as a department of the Central Government in spite of the fact that it is financed exclusively by the Central Government and is run under the management and control of that Government.

(14) The next argument advanced by Mr. Chawla was that land could not be acquired for the Food Corporation of India which is a "Company" within the meaning of the definition of that expression contained in section 3(e) of the Act without proceeding under Part VII of the Act. Section 3(e) reads as below:—

> "The expression "Company" means a Company registered under the Indian Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament of the United Kingdom or by an Indian Law; or by Royal Charter or Letters Patent; and includes a society registered under the Society Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912, or any other law relating a Co-operative Societies for the time being in force in any State."

(15) In order to decide whether the Food Corporation of India is or is not a Company within the meaning of the Land Acquisition Act, it appears to be necessary to refer to some of the relevant provisions of the Food Act under which it has been constituted. Section 3(1) provides that with effect from such date as the Central Government may specify in that behalf the Central Government shall establish for the purposes of the Food Act a Corporation known as the Food Corporation of India. Sub-section (2) of that section states that the Food Corporation shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of the Food Act to acquire, hold, and dispose of property, and to contract, and may, by that name, sue and be sued. Section 5 provides that the original capital of the Corporation, which may be fixed by the Central Government subject to a prescribed maximum and which may from time to time be increased by the Central Government, would be provided by the Central Government after due appropriation made by Parliament by law for the purpose and subject to such terms and conditions as may be determined by that Government. Section 6 states that the general superintendence,

direction and management of the affairs and business of the Corporation shall vest in a Board of Directors, which Board shall act on business principles having regard to the interests of the purchaser and consumer and shall be guided by such instructions on questions of policy as may be given to it by the Central Government. The decision of the Central Government on the question, whether any question is or is not a question of policy, has been made final by sub-section (3) of section 6. Section 7 contains the constitution of the Board of Directors which is entirely official. Section 9 provides, *inter alia,* for the removal of the Managing Director by the Central Government after consultation with the Corporation and provides for the removal of a Director, in certain circumstances, by the Board of Directors. Section 26 requires the Corporation to prepare a statement of programme of its activities as well as a financial estimate thereof and to submit the same to the Central Government for approval. Relevant part of section 33 is in the following terms:—

"Allocation of surplus profits.—(1) A Food Corporation shall establish a reserve fund to which shall be credited every year such portion of its annual net profits as that Corporation thinks fit.

(2) After making provision for such reserve fund and for bad and doubtful debts, depreciation in assets and all other matters which are usually provided for by companies registered and incorporated under the Companies Act, 1956 (1 of 1956), the balance of its annual net profits shall be paid—

(a) in the case of the Food Corporation of India, to the Central Government, and

(b) ... ...".

(16) The question, which calls for decision in this respect, is whether the Food Corporation of India established under section 3 of the Food Act, is a Company within the meaning of section 3(e) of the Land Acquisition Act or not. In order to show that it is a Company, Mr. Chawla referred to the judgments of the Supreme Court in *Valjibhai Muljibhai Soneji and another* v. *The State of Bombay* (10), *in Ishwarlal Girdharlal Joshi etc.* v. *State of Gujarat and another* (1), and in *Dr. S. L. Aggarwal's case* (8) (supra).

(10) A.I.R. 1963 S.C. 1890.

(17) In order to bring an artificial person within the four corners of "Company", as defined in the Act, two conditions must be fulfilled viz. :—

(i) It should be a Company as understood in ordinary law; and

(ii) It should be registered under any of the statutes mentioned in clause (e) of section 3 of the Act, or incorporated by an Indian law.

(18) The Food Corporation of India (referred to as the Corporation in this judgment) has, no doubt, been incorporated by the Food Act, which is an Indian Law and, therefore, it is beyond dispute that the second ingredient of the statutory definition of 'Company' contained in the Act stands satisfied in this case. In *Vallibhai Buljibhai Soneji's case* (10) (supra), Mudholkar, J., was mainly dealing with the second ingredient of section 3(e) of the Act while deciding whether the Bombay State Transport Corporation, established under the Road Transport Corporations Act, 1950, was or was not a Company within the meaning of that provision. It was held that the State Transport Corporation was a Corporation incorporated by an "Indian law." The question whether State Transport Corporation satisfied the first ingredient of section 3(e) or not was neither raised, nor decided in the *Bombay case* (10). In view of the provisions of the Road Transport Corporations Act, 1950, it was rightly assumed in that case that the Bombay State Transport Corporation was a juristic person which would in ordinary parlance be called a Company. The case of *Ishwarlal-Girhdharlal Joshi* (1) (supra) does not appear to deal with this matter at all, nor could this question possibly come up for consideration in *Dr. S. L. Aggarwal's* case, (8), which had nothing to do with the Land Acquisition Act.

(19) What then is meant by the expression "Company" contained in section 3(e). According to Stroud's Judicial Dictionary (Volume 1, page 545), "Company" means the fluctuating or successive body of persons who, from time to time, form the company, and the expression involves two ideas, (a) that the association is of persons so numerous as not to be aptly described as a firm; (b) that the consent of all the other members is not required to the transfer of a member's interest. A company may include an incorporated company. In Part 1 of K. M. Ghosh's Commentary on the Indian Company Law (1963 Edition) at page 48, after referring to the distinction between a Company incorporated by an Act of Parliament and one incorporated under a Royal

Charter, the author deals with the distinction between an incorporated company and a partnership. It has been pointed out that one of the leading differences between a company and an ordinary partnership is that in the former, a member can, and in the latter he cannot sell his shares without the consent of all other members. An unincorporated company is stated to mean some association of members, the shares of which are transferable. The other important distinctions between a partnership and an incorporated company are:—

(i) While in an ordinary partnership each partner is personally liable for all its debts contracted or all wrongs committed by the firm, it is not so in an incorporated limited company, in which case the personal liability of the members is satisfied as soon as they pay the calls.

(ii) Share of a partner is not transferable without the consent of others but share of a member in a company is freely transferable without such consent, except, so far as it might be restricted by its articles of association.

(iii) Each partner is an agent of the firm in case of a partnership but an ordinary member of a limited company is not its agent for any purpose whatsoever.

(iv) Whereas the liability of each partner for the debts of the firm is unlimited, that of a share-holder in a limited company may be limited by shares or guarantee.

(v) A limited company cannot buy its own shares.

(20) From the above discussion, it is clear that a juristic person cannot be described as a Company unless it is composed of a fluctuating body of persons, which body may conveniently be described as (i) association of individuals, and (ii) its members hold shares in it, which they can freely transfer without consulting the other shareholders. In my opinion, the Corporation does not satisfy any of the two essential ingredients of a company. It has no shareholders. There is no association of individuals, who have subscribed to the capital of the Corporation. The Corporation has been established by the Central Government under section 3 of the Food Act. The entire capital of the Corporation has been provided by the Central Government. The capital has to be provided after due appropriation made by Parliament by law. The general superintendence, direction and management of the

affairs and business of the Corporation vests in a wholly nominated Board of Directors, who are not made independent to act in any manner they like but have to be guided by instructions given by the Central Government on all matters of policy. All the Directors mentioned in section 7 of the Food Act are officials. Central Government has reserved the right to remove the Managing Director. The Secretary of the corporation has also to be appointed under section 12 of the Food Act by the Central Government The statutory functions required to be performed by the Corporation under sub-section (2) of section 13 cannot be undertaken by the Corporation without the previous approval of the Central Government. The statement of programme of its activities as well as the financial estimate in respect thereof has to be submitted by the Corporation to the Central Government at least three months before the commencement of each year as provided in section 26 (2) (a) of the Food Act. The funds of the Corporation cannot be invested except in the securities of the Central Government or any State Government or in such other manner as might be prescribed by rules framed under the Food Act. The balance of the annual net profits of the Corporation are required by section 33 (2) (a) to be paid to the Central Government. Section 43 of the Food Act prohibits the application of any provision of law relating to the winding up of companies or corporations being applied to the Food Corporation of India. Liquidation of the Corporation is permitted only by the order of the Central Government and in such manner as that Government may direct. There is no provision whatsoever for any private person or any outsider having any interest in the Corporation.

(21) Though the question about the Bombay State Road Transport Corporation being or not being a Company within the meaning of that expression as used in clause (e) of section 3 of the Act did not come up for consideration before the Supreme Court in *Viljibhai Muljibhai Soneji's* case, (10) it appears to us that even if the question had to be gone into the Road Corporation in question would have been held to be covered by that expression. Section 24 of the 1950 Act states that the Road Corporation may, subject to certain conditions, raise additional capital by the issue of new shares after the same has been authorised by the State Government. Sub-section (3) of section 23 provides for the authorised capital of the Road Corporation being divided into such number of shares as the State Government may determine and further authorise

the State Government to fix the number of shares which shall be subscribed by it, by the Central Government or by other parties including private persons whose undertakings might have been acquired by the Corporation. Allotment of shares to such other parties is required to be made by sub-section (4) of section 23 by the Corporation. There is no restriction on the transferability of the shares of the members subject to compliance with the rule made under the Act, as stated in section 23 (5). Section 23 (6) authorises the State Government to redeem the shares issued to the other parties in the prescribed manner. Section 26 authorises the Corporation to borrow money in the open market for the purpose of raising its working capital. Section 28 requires the Corporation to pay interest on such capital as may be provided by the Central Government or the State Government. Sub-section (2) of section 28 states that where the Road Corporation raises its capital by the issue of shares it shall pay dividend on such shares at such rate as may be fixed by the Corporation. The above mentioned and other provisions of the 1950 Act leaves no doubt in my mind that the Bombay State Road Transport Corporation satisfies even the first ingredient of section 3 (e) of the Act. Nothing stated by the Supreme Court in the case relating to that Corporation can, therefore, be of any avail to the appellants. For the foregoing reasons, we hold that the Food Corporation of India is not a Company within the meaning of section 3 (e) of the Land Acquisition Act.

(22) Mr. M. R. Sharma, the learned Deputy Advocate General for the State of Punjab, then contended that though if it is held that the Corporation is neither a Company nor a department of the Central Government, it should be held that it is a "Central Government undertaking" or a venture of the Government and land can, therefore, be acquired for it, as if the Corporation is itself the Government. We are unable to appreciate this argument. Sub-section (2) of section 27 of the Food Act provides that the Central Government may guarantee the loans and advances taken by the Corporation as to the repayment of principal and interest and other incidental charges. The borrower cannot be expected to be the guarantor also. In the nature of things, the Corporation is a separate juristic person than the Central Government. Even if the Corporation is held to be a "Central Government undertaking" or a venture of the Central Government, it would not thereby become the Government itself.

(23) Having held that the Corporation is not a "company", we have to repel the argument of Mr. Chawla to the effect that the acquisition is bad for non-compliance with the provisions of part VII of the Act as those provisions apply only to cases of acquisition for companies etc. We, therefore, uphold the finding of the learned Single Judge to the effect that it was not necessary for the State Government to follow in this case the special procedure prescribed in Part VII of the Act. At the same time it is the admitted case of both sides that the land in question was not acquired for the State but for the Food Corporation of India. The appellants specifically stated in the last lines of paragraph 8 of their replication that the entire money on the land is being spent by the Food Corporation of India and no part of it comes out of the Consolidated Funds of the State. In the State's rejoinder, these facts were not specifically controverted. At the hearing of the appeal we specifically asked the learned Deputy Advocate General if he could state even at that stage if any part of the compensation for the acquisition of the land in question was being paid from the State funds. Thoufh he took one day's time to answer that question, he was unable to make any such assertion. On a later day, he told us that he had received a letter from the Punjab Government wherein it was stated that the Government would be making a contribution of Rs. 100 towards the cost of acquisition of land required for the construction of godowns by the Corporation. We asked him to place on record the affidavit of any responsible authority and to state therein specifically if it had been decided to make any such contribution towards the acquisition of the site in question and if so when had such a decision been arrived at. The counsel submitted that no decision had been arrived at before the issue of the impugned notifications and that the letter referred to by him merely states that the Punjab Government is making such a contribution. No affidavit of any responsible Government official containing the requisite information was filed.

After the conclusion of the hearing of the appeal and before the pronouncement of this judgment the State submitted C. M. 641 of 1970 praying for leave to place the Government's letter in question addressed to its counsel on the record of this appeal. By our order dated February 16, 1970, the said application was dismissed by us as it had been filed after the conclusion of the arguments. Even if we were to allow the letter being placed on the record, it would not serve any purpose as it is merely a communication between the counsel and his client, wherein it is neither stated as to when the Government

made the decision referred to therein, nor as to whether the decision related to the land in question or not, nor even as to whether the State had in fact contributed anything at all towards the acquisition of the site in dispute.

(24) The relevant facts, which emerge out of the above discussion, are that the Corporation is not a Company, that Part VII of the Act was not invoked in this case, that the Corporation is not the Government, that it is not proved that the compensation for the acquisition of the land in question is to be paid either wholly or partly out of public revenues or by a company, or out of some fund controlled or managed by a local authority. The only other relevant fact which may be mentioned is that it is the admitted case of the State that the land has not been acquired for the Government but exclusively for the Food Corporation of India. No mention of the Corporation was made in any of the impugned notifications issued under the Act. What then is the legal effect of this situation ? Section 6 of the Act reads as follows :—

> "6. (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders :
>
> Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.
>
> (2) The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.
>
> (3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing."

(25) Mr. Chawla contended that the Act does not allow land being acquired for a juristic person or a private person who is neither a Company nor the State, nor a local authority. In *Pandit Jhandu Lal and others* v. *The State of Punjab and another*, (11), it was held that a declaration for the acquisition for a public purpose cannot be made unless the compensation wholly or partly, is to be paid out of public funds. Their Lordships of the Supreme Court made it clear in that case that acquisition of land can be made for a Company for a public purpose otherwise than under the provisions of Part VII of the Act, but this can be done only if the cost or a portion of the cost of the acquisition is to come out of public funds. In that case the acquisition notifications stated that the land was required to be taken by the Government for a public purpose, namely, for the construction of a labour colony under the Government Sponsored Housing Scheme for the industrial workers of the Thapar Industrial Workers Co-operative Housing Society Limited. According to the terms and conditions of the Housing Scheme in question 25 to 50 per cent of the cost of land and structures to be built upon the land was to be advanced by Government out of public funds in the shape of subsidy and loan. It was held that this showed that a large proportion of the compensation money was to come out of public funds. In their Lordships' authoritative pronouncement in *Shyam Behari and others* v. *The State of Madhaya Pradesh and others*, (12), it was held that where, in land acquisition proceedings, the entire compensation to the land-owner is to be paid by a company for which the land is acquired and no part of the compensation is to come out of the public revenues or some fund controlled or managed by a local authority, the notifications, issued by the Government declaring that the land is needed for a public purpose, must be held to be invalid in view of proviso to section 6(1) of the Act. Their Lordships proceeded to hold further (relying on the dictum of the Supreme Court in *Pandit Jhandu Lal's case* (11) (supra), that under the proviso to section 6(1) no declaration under section 6 for acquisition of land for a public purpose can be made unless either the whole or part of the compensation for the property to be acquired is to come out of public revenues. No notification under section 6 can be made, where the entire compensation is to be paid by a Company declaring that the acquisition is for a public purpose.

(11) A.I.R. 1961 S.C. 343.

(12) A.I.R. 1965 S.C. 427.

(26) Following propositions of law relating to valid acquisition of land appear to emerge from an analysis of the relevant provisions of the Act, and from a careful study of the abovementioned and various other judgments of their Lordships of the Supreme Court:—

(1) No land can be acquired under the Act without the making of a declaration under sub-section (1) of section 6;

(2) A valid declaration under section 4 or section 6 of the Act can be made :—

(a) If the land is needed for a public purpose, i.e., when the entire compensation for the acquisition of the land has to be paid from public revenues or some fund controlled or managed by a local authority;

(b) when the land is sought to be acquired for a "company" and the compensation therefor is paid at least partly out of public revenues or some fund controlled or managed by a local authority. In such a case also the acquisition will be for a public purpose

(c) if land is required for a "company" (as defined in section 3(e) of the Act, and the entire compensation for acquisition of the land is paid by such company, and no part thereof is paid from public revenues or from some fund controlled or managed by a local authority ;

(3) The State cannot acquire land under the Act for any other purpose, i.e., the State cannot acquire land for an ordinary individual or for a juristic person which is neither a "company" within the meaning of section 3(e) of the Act, nor a local authority;

(4) It is not necessary to resort to the procedure prescribed under Part VII of the Act for acquiring land under categories (a) and (b) mentioned in item No. (2) above, but any acquisition made under category (c) for a company for which no part of the compensation is paid from public funds would be invalid :—

(i) if the procedure prescribed in Part VII of the Act is not followed; or

(ii) if the land is sought to be acquired for a "private company' for any purpose other than that mentioned in clause (a) of sub-section (1) of section 40 (Vide section 44-B of the Act.)

(5) Once a valid declaration under section 6(1) of the Act is made, it would be conclusive evidence that the land is needed for a public purpose or for a company as the case may be, but this would not be so in a case where the declaration has been made in mere colourable exercise of the power conferred on the appropriate Government under section 6. In such a case it would be open to the Court to hold that in the eye of law no declaration has been made under section 6 of the Act.

(27) The relevant facts found by us in the instant case are :—

(i) that the land in dispute was acquired for the Food Corporation of India ;

(ii) that it has not been proved that any part of the compensation for acquisition of the disputed land was to come from public funds;

(iii) that no mention of the Food Corporation of India was made in the impugned notification wherein it was given out that the land was needed by the Government at the public expense for a public purpose ;

(iv) that it was the State itself which came out with the revelation in its written statement that in fact the land had been acquired for the Food Corporation of India, and possession thereof was also taken from the owner by that Corporation and not by the Collector; and

(v) that the Food Corporation of India is not a department of the Central Government, and is not a "company" within the meaning ascribed to that expression in section 3(e) of the Act.

(28) Applying the law laid down above to the facts of this case as summarised in the preceding paragraph, we appear to be bound to hold that the impugned notifications, in so far as they relate to the petitioners' land, are invalid :—

(a) because the corporation is neither Government nor a "company" as defined in the Act; and

(b) because even if the corporation could be held to be a company, no part of the compensation has been paid from public funds, and part VII of the Act has not been followed.

(29) Clause (1) of Article 31 of the Constitution states that no person shall be deprived of his property save by authority of law. Inasmuch as the respondents seek to deprive the appellants of their property otherwise than in accordance with the provisions of the Act, the acquisition proceedings must be held to be violative of the fundamental rights guaranteed to the appellants under Article 31(1) and Article 19(1)(f) of the Constitution.

(30) Notice must be taken, before parting with this judgment, of an objection of a somewhat preliminary nature taken by the learned Deputy Advocate-General to the grant of the writ petition. The counsel submitted that the appellants had disentitled themselves to obtain any relief on account of their conduct in claiming the existence of constructions and structures on the site in dispute, which allegation is no more pressed. There is no doubt that the conduct of a writ-petitioner is a relevant consideration for the exercise of discretion under Article 226 of the Constitution, but no such objection was raised before the learned Single Judge who could have been persuaded to decline to go into the merits of the controversy on that ground after having come to a finding about the claim of Vishav Karma Mandir and Dharamsala existing on the plot being unture. We do not consider it proper, in the circumstances of this case, to allow that objection being raised at the appellate stage to defeat the claim of the appellants for safeguarding their fundamental rights enshrined in Articles 19(1)(f) and 31(1) of the Constitution.

(31) For the reasons recorded above, this appeal is allowed, the order of the learned Single Judge declining to interfere in the matter is set aside and the impugned notifications, in so far as they relate to the land of the appellants, are declared to be null and void. In the circumstances of the case, the appellants would be entitled to get their costs from respondent 1.

MEHAR SINGH, C. J.—I agree.

R. N. M.