

**IN THE HIGH COURT
OF THE STATE OF NUJRANEZ**

AUGUST 1998

W.P.No../1998

ASSOCIATION OF ARTISTS (AA).....(PETITIONER)

V.

STATE OF NUJRANEZ.....(RESPONDENT)

*REPLY TO THE WRIT PETITION SEEKING TO QUASH THE
ORDER OF ACQUISITION AS BEING VIOLATIVE OF THE
RIGHTS OF THE ASSOCIATION OF ARTISTS, PRESENT IN
THE THEMATIC AREA*

BRIEF OF THE RESPONDENT

THE TABLE OF CONTENTS

(ii).	THE INDEX OF AUTHORITIES	
1.	ARTICLES	ii
2.	BOOKS	ii
3.	JUDICIAL PROCEEDINGS	ii
4.	TREATIES AND CONVENTIONS	iv
5.	ACTS	v
6.	MISCELLANEOUS	v
(iii).	THE STATEMENT OF JURISDICTION	vi
(iv).	THE STATEMENT OF FACTS	vii
(v).	THE STATEMENT OF ISSUES	viii
(vi).	THE SUMMARY OF ARGUMENTS	ix
(vii).	THE ARGUMENTS ADVANCED	
A.	ISSUE I	1
B.	ISSUE II	3
C.	ISSUE III	5
D.	ISSUE IV	8
E.	ISSUE V	9
(viii).	THE PRAYER	

THE INDEX OF AUTHORITIES

1. ARTICLES

Hughes, J., "The Philosophy of Intellectual Property", 77, The George Town L.J. 285 (1988).

Kenneth J. Vandanelde, "The new property of the 19th century: The development of the Modern concept of Property", Buffalo L. Rev. 325 (198).

2. BOOKS

S.A. de Smith, Judicial Review of Administrative Action, 3rd, [London: Stevens & Sons Ltd., 1973].

3. JUDICIAL PROCEEDINGS

Amodu Tijani v. Secretary, Southern Nigeria, [1921] 2 A.C., 356.

Balbir Kaur v. Union Territory Chandigarh, A.I.R. 1997 P&H 306.

Bhagwat Dayal v. Union of India, A.I.R. 1959 Punj. 544, 549.

Block v. Hirsh, 256 U.S. 135, 165.

Bloodgood v. R. Co., 14 Wend. (N.Y.) 51.

Bonaparte v. R. Co., 1 Baldiv C.C. 205, Fed. Cas. No.1, 617.

Cincinnati v. Louisville & N.R. Co., 223 U.S. 390, 404.

Clark v. Nash, (1905) 198 U.S. 361.

Cook v. Sprigg, [1899] A.C. 572.

Devis v. Mills, 194 U.S. 451, 457.

Dawson v. Great Northern and City Rly Co., [1905] 1 K.B. 206 C.A.

Dwarkadas v. Sholarpur Co., A.I.R. 1954 S.C. 119.

Evans v. Newton, 382 U.S. 295, 15 L ed. 2d 373.

(Firm) Mulasing v. (Firm) Fotehchand, A.I.R. 1936 Sind. 229.

Fort Worth Gas Co. v. City of Fort Worth, 35 F. 2d. 743.

Gaur Nitey Tea Co. v. State of Assam, A.I.R. 1966 Ass. 58.

Golmenton Wharf Co. v. Galveston, 260 U.S. 733.

Graves v. Elliott, 307 U.S. 383, 386.

Gurudatta Sharma v. State of Bihar, A.I.R. 1961 S.C. 1684.

Hamabai Framjee Petit v. Secretary of State, 42 I.A. 44.

In re Neagle, 135 U.S. 1, 55.

Jibaneswar v. A.B. Mukherjee, A.I.R. 1964 Cal. 45.

Jilubhai v. State of Gujarat, A.I.R. 1995 S.C. 142.

Jones v. Skinner, (1835) 5 L.J. Ch. 87, 90.

K. Kunhikoman v. State of Kerala, A.I.R. 1962 S.C. 723.

Kesavananda Bharati v. State of Orissa, A.I.R. 1973 S.C. 1461.

Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 40 L. Ed. 2d 315.

Labberton v. General Cas. Co. of America, 53 Wash. 2d 180, 332.

Laxmichand v. Indore Improvement Trust, A.I.R. 1975 S.C. 1303.

M/s Burrakur Coal Co. v. Union of India, A.I.R. 1961 S.C. 954.
Mabo v. The State of Queensland, [1992] 66 A.L.J.R. 408, 448.
Mississippi & R. River Boom Co. v. Patterson, 98 U.S. 403.
Nilabati Behara v. State of Orissa, A.I.R. 1993 S.C. 1960.
Nirsingha Murari Chakraborty v. State of W.B., A.I.R. 1977 S.C. 1174.
Pennsylvania Hospital v. Philadelphia, 245 U.S. 20, 62.
R.L. Aurora v. State of U.P., A.I.R. 1958 All. 872.
Raghuano Narain v. Govt. of U.P. A.I.R. 1987 S.C. 465.
Rudul Sah v. State of Bihar, A.I.R. 1983 S.C. 1086.
S. Gurdial Singh v. Ludhiana Improvement Trust, A.I.R. 1997 S.C.2573.
Sadashiv v. State, A.I.R. 1977 Bom. 355.
Santhakrishna v. Vaithilingam, A.I.R. 1954 Mad. 51.
Shoemaker v. U.S., 147 U.S. 287, 300.
Shrirur Mutt v. Commissioner, (1952) M.L.J. 557.
Slaughter House Cases, 18 Wall (83 U.S.) 36, 127.
Sony Corp. v. Universal City Studios. Inc., 454 U.S. 417, 429.
Sreepathi Hosiery Mill v. Chitra Knitting Co., A.I.R. 1977 Mad. 258.
State of Bombay v. R.S. Nanji, A.I.R. 1956 S.C. 294.
State of W.B. v. Subodh Gopal Bose, A.I.R. 1954 S.C. 92.
State v. Khairunissa Begum, A.I.R. 1983 All. 320.
Twentieth Century Music Corp. v. Aiken, 45 L Ed. 2d 574.
U.S. v. Jones, 109 U.S. 513.
U.S. v. Rly Co., 160 U.S. 668.
U.S. v. Gettysberg Electric R. Co., 160 U.S. 668, 687.
Union of India v. Metal Corp. of India, A.I.R. 1967 S.C. 637.
United States v. Ohio Oil Co., 234 U.S. 548, 571.
Whithers v. Nethersole, [1948] 1 All E.R. 400.

4. TREATIES AND CONVENTIONS

Agreement on Trade Relation Aspects of Intellectual Property Rights - 1994.
 Berne Convention for the Protection of Literary and Artistic Works - 1886.
 Draft Treaty for the Protection of Expressions of Folklore against Illicit exploitation and other prejudicial Actions.
 WIPO copyright treaty.

5. ACTS

Copyrights, Designs and Patents Act, 1988 (U.K.).
 The Copyright Act, 1957 (India).

6. MISCELLANEOUS

Black's Law Dictionary, West Publishing Co. 5th ed.
Bouvier's Law Dictionary, 3rd revised ed.
Encyclopedia Britannica (Inc.) Vol.15, 15th ed.
Halsbury's Law of England, Vol.9.

STATEMENT OF JURISDICTION

The Respondent, humbly submits that this memorandum is in reply to the writ petition filed by the Association of Artists (AA), before this Hon'ble High Court of Nujranetz, under Art...of the Constitution of the state of Nujranetz.

THE STATEMENT OF FACTS

In the year 2000, NUJRANEZ, a common law country, which is a member of the WTO, is hosting a grand six month Exposition and invites designers from 10 countries, including Vurd, a famous Designer from DNANAJAR, to design thematic areas on various themes. Vurd contacted hundreds of artists, sculptors, musicians and performer so that their painting, motifs, artifacts, musical compositions, performances and other contribution can be integrated into a 50,000 sq.ft. thematic area.

There are three group of contributors, namely:

GROUP 1 ARTISTS: Those who have motifs, art works and other folklore material which is in public domain, yet belong to a well- defined DNANAJAR community.

GROUP 2 ARTISTS: Small artists who are inclined to assign all rights to Vurd, for a sum of money. They are very conscious that their created works (paintings, logos, art form, musical composition, lyrics etc.) should not be distorted.

GROUP 3 ARTISTS: Well-known sculptors, musicians, lyricists and writers who do not intend to assign their rights but are willing to give exclusive six month licences, excluding any form of electronic rights (video or Internet).

During the designing the design gets produced for an area of 70,000 sq.ft. The NUJRANEZ government is unwilling to pay for the additional area and insists that the design be cut short. Accordingly under Vurd's supervision the government cuts short the design area. The exposition is a big success and the NUJRANEZ Government acquires Vurd's thematic area by passing a law and paying him ND 2 million. It also places an advertisement in all the leading newspaper invited tenders from film producer to make a documentary on this thematic area.

The Artists form an Association of Artists (AA) and file a writ petition before the High Court of NUJRANEZ seeking a quashing of the acquisition order as being violative of their rights.

THE STATEMENT OF ISSUES

- I. Whether the state has competence to acquire property in the thematic area.
- II. Whether intellectual property is included within the ambit of property.
- III. Whether there has been violation of the artists' right by the order of acquisition.
- IV. Whether the criteria of public purpose has been satisfied by the act of acquisition of the thematic area by the Government of Nujranetz.
- V. Whether the condition of compensation has been satisfied in the instant case.

SUMMARY OF ARGUMENTS

A. Whether the state has competence to acquire the property in the thematic area.

The State has acquired the property in the thematic area by virtue of the principle of eminent domain. The principle of eminent domain gives the state the power to acquire any and every property. Therefore, the state has competence to acquire the property in the thematic area.

B. Whether Intellectual property comes within the ambit of property.

Intellectual property has all the essential attributes of property. Therefore it comes within the ambit of property.

C. Whether the order of acquisition violates the artists' right in the thematic area.

Group 1 artists do not have any property rights as folklore is not protected under copyright, it is not private property and it is not being used for commercial exploitation. Group 2 artists have assigned their rights to Vurd. Group 3 artists do not have the locus standi to claim compensation through writ petition ... there has been no violation and the association has no locus standi.

D. Whether the condition of public purpose has been satisfied.

The public purpose in the instant case is the educative utilization of the thematic area. Therefore, the condition has been satisfied.

E. Whether the condition of compensation has been satisfied.

The order of acquisition provides for the payment of 2 million N.D. to Vurd, the author of the thematic area. This amount has been fixed based on the market value of Vurd and the thematic area. Therefore, the condition of compensation has been satisfied. Adequacy of compensation is not justifiable.

WRITTEN SUBMISSION

I. THE STATE HAS COMPETENCE TO ACQUIRE PROPERTY IN THE THEMATIC AREA.

A.1. The Concept of eminent domain.

A.1.a. It is an accepted principle of law that “Property right may be acquired in a variety of ways including by acts of public authority”.¹ The power to make expropriation in favour of the state is called the power of eminent domain² and this power is justified on the basis “of the services they render to the general public”.³

A.1.b. Eminent domain is defined as the superior right of property subsisting in a sovereignty by which private property may to certain cases be taken or its use controlled for the public benefit, without regard to the wishes of the owner.⁴

A.1.c. However, no person shall be deprived of his property except by authority of law.⁵ For a law authorising acquisition of private property to be valid, it must satisfy the conditions of ⁶

- i) Public purpose⁷
- ii) Payment of compensation⁸

-
1. Property, Law of, Encyclopedia Britannica, Vol.15, 15th ed., p.47.
 2. The term ‘eminent domain’ seems to have originated in 1925 by Hugo Grotious who wrote of this power in his work “De Jure Belli Et Pacis”. See also Black’s Law Dictionary, West Publishing Co. p. 470, 5th ed; Pennsylvania Hospital v. Philadelphia, 245 U.S. 20, 52; Galimonton Wharf Co. v. Galveston, 200 U.S. 733.
 3. Supra note 1 at p. 48.
 4. Bouvier’s Law Dictionary, p. 1009, 34d revsn. See also, U.S. v. Jenes, 109 U.S. 513.
 5. See Constitution of India, Art. 300-A. Seervai, H.M., Constitutional Law of India, 3rd ed., (N.M. Tripathi Pvt Ltd., Bombay), for Indian position.
 6. Halsbury’s Laws of England, Vol.18, 5th ed. See also P.K. Tripathi “Right to Property after Fourty fourth Amendment - Better protected than ever before”, A.I.R. 1980 (J.) 49, Basu, D.D. Constitution of India (12th ed. 1996); Shukla, V.N., Constitutional Law of India, pp.757, (9th ed. 1994).
 7. See Venkatamma v. C.I. of Tea Board, Mysore, A.I.R. 1972 S.C. 2883; Arnold Rodricks v. State of Maharashtra, A.I.R. 1955 S.C. 1788; Barkya Jiakur v. State of Bombay, A.I.R. 1960 S.C. 1233.
 8. See Dawson v. Great Northern and City Rly Co. [1905] 1 K.B. 208. C.A.; State v. Khairunissa Begum, A.I.R. 1983 All 320.

A.1.d. The common law concept of property may be defined as an exclusive right to control an economic good, it is the name for a concept that refers to the rights and obligations, privileges and restrictions that govern the relations of men with respect to things of value.⁹

A.1.e. The general rule to be gathered from all the authorities, considered together, is, that a legislative grant of power to condemn property, expressed in general terms confers on the guarantee power to take all kind of property except property already devoted to public use and necessary for the exercise of such use.¹⁰

A.1.f. The U.S. Supreme Court has defined property as everything which has an exchangeable value, and the right of property includes the power to dispose of it according to the will of the owner.¹¹

A.1.g. In Gurudaga Sharma v. State of Bihar,¹² the Hon'ble Supreme Court defined the concept of property under the Indian Constitution It held that –

“Property’ as a legal concept, is the sum of a bundle of rights and in the case of tangible property would include the right of possession ... and so on.

A.2. Although the concept of property was confined to land and tangible things, the Supreme Court, in a plethora of decisions has extended it to tangible and intangible property.

A.2.a. In Jilubhai v. State of Gujarat¹³ quoting from ‘The Law Lexicon’,¹⁴ it was held that

Property is the most comprehensive of all terms which can be used, in as much as it is indicative and descriptive of every possible interest which the party can have.

A.2.b. The expression property, therefore must be understood both in the corporal sense ... as well as its juridical or legal sense of a bundle of rights which the owner can exercise under municipal law .¹⁵

9. Property, Law of, Encyclopedia Britannica, Vol.15, 15th ed. p.46.

10. 27 Cant L.J. 207. See also Bloodgood v. R. Co., 14 Wend. (N.) 51; Bonaparta v. R Co., Baldiv C.C. 205, Fed. Cas. No.1, 617; U.S. v. Rly Co., 160 U.S. 668.

11. Slaughter House cases, 16 Wall. (83 U.S.) 35, 127. See also, Graves v. Elliot 307, U.S. 323, 386; Mississippi 4 R. River Boom Co. v. Patterson, 98 U.S. 403.

12. A.I.R. 1981 S.C. 1984. See also Nirsingho Murari Chakraborty v. State of W.B., A.I.R. 1977 S.C. 1174; Davis v. Mills, 194 U.S. 451, 457; Block v. Hirsh, 256 U.S. 135, 165; United States v. Ohio Oil Co., 234 U.S. 548, 571.

13. A.I.R. 1995 S.C. 142.

14. Aiyar, Ramanatha, The Law Lexicon (Reprint ed. 1987) p. 385.

15. State of W.B. v. Subodh Gopal Bose, A.I.R. 1954 S.C. 92. See also, Shrirur Mutt v. Commissioner, (1952) M.L.J. 557; Dwarkadas v. Sholarpur Co., A.I.R. 1954 S.C. 119.

It is not only the 'thing' which is the subject matter of ownership but includes also the dominium or the right of ownership or of partial ownership.¹⁶

A.3. Private property is that property that is protected from being taken for public use. It is such property as belongs absolutely to an individual, and of which he has the exclusive right of disposition.¹⁷

A.4. The concept of eminent domain is superior to property rights and extends to all property within the jurisdiction of the state.¹⁸ The power is a universal one¹⁹ and is an attribute of sovereignty and inheres in every independent state.²⁰ A.S. Therefore, it is submitted that the power of eminent domain renders the state competent to acquire property in the thematic area.

II. INTELLECTUAL PROPERTY IS INCLUDED WITHIN THE AMBIT OF PROPERTY

B.1. Intellectual property in the literal sense, means the things which emanate from the exercise of the human brain.²¹

B.1.a. The two chief items of Intellectual property are the writings of authors, and inventions made by inventors.²² In its broadest sense, the term 'intellectual property' includes, on one level, idea, concept, know-how, and other creative abstractions, and on a second level, the literary, artistic or mechanical expressions that embody such abstractions.²³

16. Mulla, Transfer of Property Act, (1973) 6th ed., p.49.

17. Black's Law Dictionary, West Publishing Co., 5th ed. p. 1095. See also, Balbir Kaur v. Union Territory. Chandigarh, A.I.R. 1997 P&H 305; Jones v. Skinner, (1835) 5, L.J. Ch. 87, 90; n v. General Gas. Co. of America, 53 Wash. 2d 180, 332.

18. U.S. v. Gettysburg Electric R. Co., 160 U.S. 668, 689.

19. Bouvier's Law Dictionary, p.1009 (3rd edn).

20. Shoemaker v. U.S., 147 U.S. 287, 300; Cincinnati v. Louisville 4 N.R. Ce., 223 U.S. 390, 404.

21. See Jeremy Philips, Introduction to Intellectual Property Law (London: Butterworths, 1985) 03

22. See Dr. Gopalakrishnan, N.S., Intellectual Property and Criminal Law, p. 142.

23. See John M. Couley and Robert M. Bryan, "A Unifying theory for the litigation of computer software copyright cases", 63 N.C.L.R. 563, 567 (1985).

B.1.b. Just like other forms of things, these has also been identified as property on the basis of the general understanding of the concept of property.²⁴

B.1.c. Blackstone explained the development thus:

When a man by the exertion of the rational powers has produced an original work, he seems to have clearly the right to dispose of that identical work as he pleases, and any attempt to vary the disposition he has made of it appears to be an invasion of that right.²⁵

Therefore it is submitted that intellectual property is included within the ambit of property.

B 2. Copyright in intellectual property originated as a right to protect the intellectual labour of a man in his books, literary, dramatic, musical and artistic works.²⁶

The reason for this development has been rightly put by Philip Wittenberg thus: The law of literary property evolved not only from the creative impulse of man, but also from the inhibitions and prohibitions with which writing has ever been involved. From creation for pleasure and aesthetic enjoyment came the notion in acquisitive societies of payment and profit. From autocracy and despotism came prohibition and censorship. All of these commingled to give rise slowly to law governing literary property.²⁷

B.2.a Property right under copyright law subsists in works set out in Article 6(1) of the Berne Convention.²⁸

B.2.b In the common law concept, copyright has always been treated as a

24. See generally Eaton S. Drone, *Treatise on the law of property in intellectual productions*. See also Kenneth J. Vandavelde, "The new property of the 19th century: The development of the Modern Concept of Property", *Buffalo L. Rev.* 325 (1980) and Hughes, J., "The Philosophy of Intellectual Property", 77, *The George Town L.J.*, 285 (1988).

25. Blackstone, *Commentaries on the Law of England*, Book II, Chapter 26, pp. 405-06.

26. *supra* n. 22, at p.145.

27. See Philip Wittenberg, *The Law of Literary Property*, (New York World Publishing Co., 1957) p. 13.

28. Berne Convention for the Protection of literary and artistic work, 1888. See also Black's Law Dictionary, West Publishing Co., 5th ed. p.

property right and is part of that group of property rights constituting intellectual property.²⁹

B.3. Copyright by its nature is linked inseparably with the individual author since it is he who should be stimulated to create and rewarded for his work.³⁰ Therefore it is personal right.³¹

B.3.a. It is submitted that copyright by virtue of being a personal right belongs absolutely of an individual and that he has the exclusive right of disposition.³²

B.4. Placing reliance on this it is submitted that copyright is a private property right.

III. THERE HAS BEEN NO VIOLATION OF ARTISTS' RIGHT BY THE ORDER OF ACQUISITION.

C. The rights enjoyed by the association of artists in the creation of the thematic area is of three types.

1. Rights of Group 1 artists
2. Rights of Groups 2 artists
3. Rights of Group 3 artists

C.1. Rights of Group 1 artists.

C.1 a. Group 1 artists are artists who have folklore material in the public domain.” Folklore is not protected under the copyright laws.³⁴

C.1.b. Expression of folklore” include tangible expressions, such as production of folklore, in particular, drawings, ... mosaic ..., textiles ... etc.³⁵ The utilization of expression of folklore for purposes of education and for creating an original literary or artistic work do not require written authorization.³⁶

29. Flint, M.F., Intellectual Property: The New Law: a guide to the Copyright, Designs and Patents Act 1988 (London: Butterworths 1989).

30. Copyright law, Encyclopedia Britanica, Vol.15, 15th ed. [Helen Hemigway Beaton].

31. Ibid.

32. Black's Law Dictionary, West Publishing Co., 5th ed. p.616.

33. Refer facts, p. I, para 3.

34. See Preamble, Draft treaty for the protection of expressions of folklore against illicit explanation and other prejudicial actions, folklore IP treaty test, <http://www.wipo.int.www.OMPI.int>.

35. Ibid at Art. 1(iv)(a).

36. Supra n.2 at Art. 6(1).

C.1.c. ‘Public domain’ is defined as ‘the status of productions of authorship upon which the copyrights have expired and of works which have been published without copyright protection.’³⁷

C.1.d. Therefore it is submitted that use of materials in public domain will not invoke copyright infringement.

C.1.e. Folklore is community property.³⁸ The concept of community property has been recognised in the historic decision of the Australian High Court in the case of Mabo v. The State of Queensland.³⁹ However, the common law recognises the concept of community property only in the case of land.⁴⁰ It is submitted that in the instant case, it is the creativity of a community which is community property. Creativity cannot be confined to an individual, the community needs to be thrown open.

C. 1.f. The term ‘public property’ is commonly used as a designation of those things which are ‘publici juris’ and therefore considered as owned by ‘the public’, the entire state or community, and not restricted to the dominion of a private person.⁴¹ The term ‘private property’ is defined as such property as belongs absolutely to an individual and of which he has the exclusive right of disposition.

C.1.g. Placing reliance on this it is submitted that folklore belonging to a community is not private property but public property. Therefore, it is submitted that Group 1 artists do not have any property.

C 2. Property rights belonging to Group 2 artists.

C.2 a. Group 2 artists have property rights in the form of copyrights over their created works.⁴² These artists are inclined to assign their rights to Vurd for an affordable sum of money.⁴³

37. The Random House Dictionary of the English language (Random House Inc. 1983) p.1162. See also, Kewanee Oil Co. v. Bicron Corp., 415 U.S. 470, 40 L. Ed. 2d 315; Evans v. Newton, 383 U.S. 295, 15 L. ed. 2d 373; In re Neagle, 135 U.S. 1, 65.

38. Supra n. 2 at Art. 1. See also Dr. K.K. Puri, “Protection of Cultural and Intellectual Property rights of indigenous peoples”, NLSJ (1996).

39. [1992] 66 A.L.J.R. 408, 448.

40. Amodu Tijani v. Secretary, Southern Nigeria, [1921] 2 A.C., 356 at pp. 403-404. See also, Cook v. Sprigg, [1899] A.C. 572 at p. 579.

41. Black’s Law Dictionary, [West Publishing Co.], 5th ed. 1095.

42. Art. 2(1) of the Berne Convention for the protection of literary and artistic works provides for protection of literary and artists works, The works of these artists are contained in this section. See also, Art. 9.2 of TRIPPS.

43. Refer facts p.2, para. 2.

C.2.b. Any assignment is a parting with the whole rights, limited, it is true, to a particular place or places or for a particular period, but still to that extent a complete diverting of the property in the copyright from one owner to another.⁴⁴

C.2.c. The mode or form of assignment is absolutely immaterial provided the intention of the parties is clear.⁴⁵

C.2.d. In the instant case, the intention of Vurd is clear as the facts clearly state Vurd intended to acquire the contributions of the artists.⁴⁶ Group 2 artists are also, for an affordable sum of money, inclined to assign all their rights to Vurd.⁴⁷ It is therefore, submitted that an assignment of rights has taken place in the instant case.

C.2.e. An assignment of rights being a parting with the whole rights,⁴⁸ it is submitted that Group 2 artists do not have any property rights in their creations any more. These rights now belong to Vurd.

C.3. Property rights belonging to Group 3 artists.

C.3.a. Group 3 artists have property rights in the form of copyrights by virtue of their work being protected under the Berne Convention.⁴⁹ These artists do not intend to assign their rights. They have however given exclusive licences till the end of the six month exposition.⁵⁰

C.3.b. The government of Nujranetz acquired the entire thematic area from Vurd through the principle of eminent domain.⁵¹ Eminent domain gives the state the right to acquire any and every property, subject to the satisfaction of the conditions of public purpose and compensation. Eminent domain is an essential attribute of sovereignty and cannot be challenged.⁵²

44. Whithers v. Nether Sole, [1948] 1 All E.R. 400 at p.404.

45. White and Tudor's Leading cases in equity, (9th ed), p. 105.

46. Refer facts p. 1, para 2.

47. Ibid at p.2, para I.

48. Supra n.12.

49. Supra n.10, See also Art. 2 of WIPO Copyright Treaty.

50. Refer facts p.2, para 2.

51. Ibid at para 5.

52. Refer supra n.4.

C.3.c. It is submitted that the only remedy that the artists of group 3 can claim is the right to compensation. This should be sought an alternative remedy other than writs.

C.3.d. Compensation under writs are entertained only in cases concerning violation of right of life.⁵³ In the instant case, there is no violation of the right to life or liberty of group 3 artists.

C.3.e. It is therefore submitted that group 3 artists do not have the locus standi to claim compensation through the writ petition as the remedy sought is not extraordinary.⁵⁴ The proper procedure to claim compensation is through a civil suit.⁵⁵

C.3.f. It is also submitted that the association of artists do not have the locus standi to challenge the order of acquisition as being violative of their rights as the artists of Groups 1 and 2 do not have any rights in the thematic area.

IV. THE CRITERIA OF PUBLIC PURPOSE HAS BEEN SATISFIED BY THE ACT OF ACQUISITION OF THE THEMATIC AREA BY THE GOVERNMENT OF NUJRANEZ.

D.1. The limited grant of copyright protection is a means by which an important public purpose may be achieved. It is intended to motivate the creative activity of authors by the provision of a special reward, and to allow the public access to the products of their genius after the limited period of exclusive control is expired.⁵⁶ The limited grant is a means by which an important public purpose may be achieved.

D.1.a. Copyrights, considered as unique forms of property and monopoly are essentially pecuniary rights.⁵⁷ It is a limited monopoly.

D.1.b. According to the common law concept eminent domain gives a right to resume the possession of the property in the manner directed by the constitution and the law of the state whenever the public interest requires it.⁵⁸

53. Rudul Sah v. State of Bihar, A.I.R. 1983 S.C. 1086; Nilabati Bebera v. State of Orissa, A.I.R. 1993 S.C. 1960.

54. de Smith, Judicial review of administrative action, Appendix 1; p. 507.

55. In India S. 19 of Civil Procedure Code. See Sreepathi Hosier Mills v. Chitra Knitting Co., A.I.R. 1977 Mad. 259; (Firm) Mulsing v. (Firm) Fatchchand, A.I.R. 1935 Siad. 229.

56. Sony Corp. v. Universal City, Studies Inc., 464 U.S. 417, 429, L. Ed. 2d 574.

57. Encyclopedia Britannica, Vol.5 (15th ed. Helen Hemingway Benton Pvt.) at p. 152- 153.

58. Black's Law Dictionary, West Publishing Co., 5th ed., p. 470.

D.1.c. A statement that what would serve the general interest of the community is properly a public purpose.⁵⁹

D. 1.d The concept of public purpose is not static but a dynamic one.⁶⁰ Accordingly it began to be held that there is sufficient public use provided it is in anyway of any use to the public.⁶¹

D.1.e. The immediate effect of copyright law is to secure a fair return for an authors' creative labour. But the ultimate aim is, by this incentive to stimulate (the creation of useful work) for the general public good.⁶²

D.1.f. The requirement of public purpose would render unlawful the taking of property for purposes, among others, of exerting pressure in a political dispute, or of taking it in order to hand it over to another individual or company.⁶³

D.1.g. It is submitted that in the instant case, the acquisition has not taken place in order to hand the property over to another individual. It has been taken for the public of Nujranез as a whole.

D.1.h. Further, the government intends to make a documentary on the thematic area.⁶⁴ It is submitted that documentaries are normally never sold. They are used for educative purposes.

D.1.i. Further, it is submitted that although the notification has not disclosed public purpose it cannot be said that the scheme itself is vague and is liable to be quashed.⁶⁵

D.1.j. Placing reliance on the above submissions it is submitted that the condition of public purpose in the instant case has been satisfied. Therefore the order of acquisition is valid.

V. THE CONDITION OF COMPENSATION HAS BEEN SATISFIED IN THE INSTANT CASE.

E.1.a. The order of acquisition in the instant case has been done acquiring

59. State of Bombay v. R.S. Nanji, A.I.R. 1956 S.C. 294; Sadashiv v. State, A.I.R. 1977 Bom. 355; R.L. Aurora v. State of U.P., A.I.R. 1958 All. 872; Hamabai Framjee Petit v. Secretary of State, 42 I.A. 44.

60. Bhagawat Dayal v. Union of India, A.I.R. 1959 Punj. 544, 459.

61. Clark v. Nash, (1905) 198 U.S. 361.

62. Twentieth Century Music Corp. v. Aiken, 45 L Ed. 2d 574.

63. Halsbury's Laws of England, Vol.18, para 1729.

64. Refer fact p.3, para I.

65. S. Gurdial Singh v. Ludhiana Improvement Trust, A.I.R. 1997 S.C. 2573.

the thematic area from Vurd.⁶⁶

E 1.b. Vurd has created the thematic area by compiling all the composite elements.⁶⁷ He therefore has copyright over his work and his ownership over the entire thematic area by virtue of being its author.

E.1.c. The order of acquisition provides for the payment of 2 million N.D. to Vurd.⁶⁸ Therefore, it is submitted that the condition of compensation, in the instant case has been satisfied.

E.2. Inadequacy of compensation will not vitiate the applications of the doctrine of eminent domain.

E.2.a. All private property is held subject to the demands of public use. The constitutional guarantee of just compensation is not a limitation of the power to take, but only a condition of its exercise.⁶⁹

E.2.b. Inadequacy of compensation will not strike down a law under the principle of eminent domain.⁷⁰

E.2.c Further adequacy of compensation is not justifiable⁷¹ It is also submitted that the amount of compensation paid to Vurd has been calculated taking into consideration the market value⁷² of Vurd and the thematic area created by him. Therefore the law is not arbitrary and is reasonable.

66. Refer facts, p.2, para 5.

67. Art. 2(5) of the Berne Convention provides for protection to collections of literary or artistic works.

68. Refer fact, p.2, para 5.

69. Bruwer, J. in Island Water Supp. Co. v. Brooklyn, 166 U.S. 685, 689.

70. Jibaneswar v. A.B. Mukherjee, A.I.R. (1964) Cal. 45, 47; Santha Krishna v. Vaithilingam, A.I.R. 1954 Mad. 51, 61-62.

71. K. Kunhikoman v. State of Kerala, A.I.R. 1962 S.C. 723, 729; M/s Burrakur Coal Co. v. Union of India, A.I.R. 1961 S.C. 1954, 962-63; Gour Nitaj Tea Co. v. State of Assam, A.I.R. 1966 ASS 58; Laxmichand v. Indore Improvement Trust, A.I.R. 1975 S.C. 1303, 1309. See also Kesavananda Bharati v. State of Orissa, A.I.R. 1973 S.C. 1461.

72. See also Raghubans M. Narain v. Govt. of U.P., A.I.R. 1967 S.C. 67

PRAYER

In the light of the above said grounds and other grounds to be urged at the time of argument, the respondent most humbly pray that this Honourable Court may be pleased to adjudge and declare that

1. The state has competence to acquire property in the thematic area.
2. Intellectual property is included within the ambit of property.
3. The order of acquisition does not violate the artists' rights in the thematic area.
4. The condition of public purpose has been satisfied.
5. The condition of compensation has been satisfied.