

Kali Charan vs The State Of Uttar Pradesh on 26 November, 2024

Author: B.R. Gavai

Bench: B.R. Gavai

2024 INSC 898

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 15782 of 2023)

KALI CHARAN AND OTHERS ...APPELLANT(S)

VERSUS

STATE OF U.P. AND OTHERS ...RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 15535 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 19512-19513 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 19510-19511 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 24970 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 20314 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). of 2024)
(D. No. 34908/2023)

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CIVIL APPEAL NO(S). OF 2024

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Reason:

(Arising out of SLP(Civil) No(s). of 2024)
(D.No. 35223/2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 24969 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 24971 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 23732 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 23727 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 25000 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 16057 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 17876 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 17015 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 21488 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 17888-17889 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 18703-18704 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 19514-19515 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 18705-18718 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 19222-19226 of 2023)

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CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 18885 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 19904 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 21354 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 20605 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 20486 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 20634 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 21500 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 21330 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 20541 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 21446 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 22041 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 21495 of 2023)

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 7247 of 2024)

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JUDGMENT

Mehta, J.

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1. Delay in filing application(s) for setting aside of abatement is condoned.
2. Abatement is set aside.
3. Delay in filing the application(s) for substitution is condoned.
4. Application(s) for substitution is allowed.
5. Application(s) for transposition is allowed.
6. Application(s) for intervention/impleadment is allowed.
7. Leave granted.

INTRODUCTION

8. The present batch of civil appeals @ special leave petitions arise out of the land acquisition proceedings initiated by respondent No.1- State of Uttar Pradesh¹ for planned development in the District Gautam Budh Nagar, Uttar Pradesh, through respondent No.3- Yamuna Expressway Industrial Development Authority² by invoking ‘urgency provisions’ incorporated in Sections 17(1) and 17(4) of the Land Acquisition Act, 1894³.

9. Arguments on all the appeals @ special leave petitions have been heard analogously and are being disposed of vide this common judgment.

10. In total, 35 civil appeals @ special leave petitions are preferred both by landowners and YEIDA which can be categorized into two batches as mentioned below:

BATCH NO. 1- LANDOWNERS’ APPEALS @ SPECIAL LEAVE PETITIONS

11. A total of 29 civil appeals @ special leave petitions have been filed by the landowners challenging the decision of the Division Bench of the Allahabad High Court in “Kamal Sharma v. State of U.P. thru Special Secretary Industrial Development and Ors⁴”. The appeal 1 hereinafter being referred to as ‘State’ 2 hereinafter being referred to as ‘YEIDA’ 3 hereinafter being referred to as “the Act” 4 Writ-C No. 26767 of 2010; hereinafter referred to as ‘Kamal Sharma’ @ special leave petition titled “Kalicharan v. State of U.P. and others⁵” is being treated as the lead matter in this batch. BATCH NO. 2- YEIDA APPEALS @ SPECIAL LEAVE PETITIONS

12. The YEIDA has filed 6 appeals @ special leave petitions challenging various decisions of the Division Bench of the Allahabad High Court invalidating the self-same land acquisition proceedings for integrated development of notified areas including the decision in “Shyoraj Singh and Others v.

State of U.P.6”. The appeal @ special leave petition titled “YEIDA v. Shyoraj Singh and Ors.7” is being treated as the lead matter in this batch.

BRIEF FACTS

13. The chronology of events leading to the filing of these civil appeals are as follows.

14. For the sake of convenience, we shall refer to the factual context as noticed in Writ-C No. 26767 of 2010 titled as “Kamal Sharma v. State of U.P. thru Special Secretary Industrial Development and Ors.8(lead matter in Batch No.1) filed before the Allahabad High Court. 6 Writ-C No. 30747 of 2010; hereinafter referred to as ‘Shyoraj Singh’ 8 Supra, Note 4

15. Upon receipt of a proposal from the Director, Land Acquisition Directorate, Rajswa, Uttar Pradesh, with prior approval of the State Government, a notification dated 26th February, 2009 was issued under Section 4(1)9 read with Sections 17(1)10 and 17(4)11 of the Act for the acquisition of the tracts of lands in question for planned development in the District Gautam Budh Nagar, Uttar Pradesh. The relevant portion of the aforesaid notification is extracted below: -

“Under sub-section (1) of section 4 of the Land Acquisition Act, 1894 (Act No. 1 of 1894), the Governor hereby notifies for the information of the general public that the land mentioned in the Schedule below shall be earmarked for public purposes, namely, the Yamuna Expressway Industrial Development Authority in District Gautam Budh Nagar for Planned Development.

Because the Governor is of the opinion that the provisions or sub-section (1) of section 17 of the said Act apply to the said land, because the said land is urgently needed for planned development in district Gautam Buddha Nagar through Yamuna Expressway Industrial Development Authority and in view of this urgency, it is also necessary that the possible delay in conducting the Investigation 9 4. Publication of preliminary notification and power of officers thereupon. – (1) Whenever it appears to the [appropriate Government] the land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice , being hereinafter referred to as the date of the publication of the notification)]. 10 17. Special powers in case of urgency. – (1) In cases of urgency, whenever the [appropriate Government], so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1). [take possession of any land needed for a public purpose]. Such land shall thereupon vest absolutely in the [Government], free from all encumbrances.

11 17. Special powers in case of urgency. – (4) In the case of any land to which, in the opinion of the [appropriate Government], the provisions of sub-section (1) or sub-section (2) are applicable, the [appropriate Government] may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time [after the date of the publication of the notification] under section 4, sub-section (1).

under Section 5-A of the said Act should be avoided.

Therefore, the Governor also directs under sub-section (4) of Section 17 of the said Act that the provisions of Section 5-A of the said Act shall not apply.” (emphasis supplied)

16. Since the land was sought to be acquired by invoking urgency provisions under Sections 17(1) and 17(4) of the Act, the landowners made representations to the Chief Executive Officer(‘CEO’) of YEIDA requesting that their land may not be acquired because the status of the land was ‘Abadi Bhoomi’ which was being used by the landowners as dwelling units and for rearing their cattle. The functionaries/authorities concerned did not accede to the request of the landowners and the State Government issued the notification dated 19th February, 2010 under Section 6 of the Act.

17. The landowners challenged the acquisition of their lands by filing numerous writ petitions before the Allahabad High Court, primarily seeking the relief of quashing the acquisition proceedings undertaken by invoking Sections 4 and 6 read with Sections 17(1) and 17(4) of the Act on several grounds which may be broadly categorized as below: -

(i) That the State Government arbitrarily invoked Section 17(1) and Section 17(4) of the Act and deprived the landowners of their valuable right to raise objections under Section 5-A of the Act.

(ii) That a bare reading of the notification issued under Section 4 would reflect that there was no material with the State Government for invoking the urgency clause in the matter of acquisition of land for planned development.

(iii) That there was no genuine public purpose behind the acquisition and thus, the impugned action was illegal, arbitrary and unjustified.

18. These writ petitions were decided by the Allahabad High Court taking divergent views which are assailed in these appeals by special leave.

19. The Division Bench of the Allahabad High Court vide judgment dated 24th April, 2017 allowed the Writ-C No. 30747 of 2010 titled Shyoraj Singh and quashed the land acquisition notifications in question holding that the grounds being taken in the impugned notifications for invocation of the urgency clause were arbitrary and bad in law. The learned Division Bench in Shyoraj Singh summoned the original records from the State Government and perused the same to arrive at the following conclusions: -

(i) The Division Bench referred to two letters issued by the authorities of the District Gautam Budh Nagar, the details of which are as follows:

(a) A letter justifying the invocation of the urgency clause signed by the Additional Chief Executive Officer of Yamuna Expressway, Tehsildar, Naib Tehsildar, and Lekhpal. The relevant extract from the said letter is as below: -

“Yamuna expressway urgently needs the proposed land for planned industrial development. In the event of delay in the acquisition, there is a strong possibility of increasing encroachment on the proposed land, due to which public interest project of planned industrial development will adversely be affected.” “Hearing and disposal of written/oral objections will definitely take years and there will be unexpected delays which will stall the planned development.”

(b) A letter issued in 2010 by the District Magistrate, recording a satisfaction that the prevailing facts and circumstances justified the invocation of the powers under Section 17 of the Act for dispensing with the hearing of objections under Section 5-A of the Act. The relevant extract from the said letter is as below:

“Due to the need to complete the project without delay in the acquisition of the said land, it is necessary to take possession of the proposed land with immediate effect. In the case of using Section 17 of LAA, the provisions of Section 5-A of the Act become extinct and I fully agree with the justification of ending the opportunity of hearing to the land owners.” With reference to the aforesaid letters, the Division Bench observed that the two grounds mentioned for invoking urgency clause were: (1) That there are chances of unauthorized construction/encroachment on the said land. (2) Large number of landowners would be affected by the acquisition and hearing such large number of landowners would delay the project.

The Division Bench in Shyoraj Singh held that the above- noted factors did not furnish legally acceptable justification for the exercise of power under Section 17(1) of the Act by the State Government because the acquisition was primarily meant to cater to private interests in the name of industrial development of the District and no material was produced on record to show that the State Government and/or agencies/instrumentalities of the State were intending to establish industrial units on the acquired tracts of land. Further, the justification for invoking urgency provisions, that the land will be encroached on, had no substance as the land was already in possession of the recorded tenure holders.

(ii) The Division Bench also observed that the notification under Section 4 of the Act was published on 26th February, 2009 but thereafter, the State Government took nearly one year to publish the notification under Section 612 of the Act. The time of one year consumed by the State Government in publishing the notification under Section 6 of the Act was by itself sufficient to infer that there was absolutely no

urgency that could have justified the invocation of the urgency clause, thereby depriving the landowners of an opportunity of hearing under Section 5-A of the Act.

20. However, another Division Bench of the Allahabad High Court while dealing with a batch of 73 writ petitions challenging the very same land acquisition proceedings took a different view from Shyoraj Singh and dismissed the writ petitions filed by the landowners, the lead matter being Writ-C No. 26767 of 2010 titled “Kamal Sharma v. State of U.P.”. The Division Bench while upholding the acquisition proceedings held that it could not be accepted that the entire exercise for invocation of urgency clause was mechanical or there was no material with the State for recording the subjective satisfaction to this effect. The reasons assigned by the Division Bench in Kamal Sharma were as follows: -

(i) A perusal of the Master plan and the facts established that the land required for development of Yamuna 12 Published on 19th Feb, 2010.

Expressway [‘Planned development through Yamuna Expressway’] was for an integrated project. The land was initially acquired for the Yamuna Expressway and, thereafter, for developing land parcels alongside the Expressway as townships.

(ii) The original record of the State contains a categorical statement that the State Government, after scrutinizing the record had accepted the proposal applying mind to the fact that, in case the objections under Section 5-A of the Act were invited, it would adversely affect and cause delay in execution of the project of public importance. The said decision was made looking at the enormity of the project which required the acquisition of the lands spread over a large area of 18,000 hundred acres (approx.) comprising 16 villages. The development of the village ‘Abadi Bhoomi’s by YEIDA was also linked to the development of the land alongside the Expressway. It was not the case of non-application of mind and no fault in the decision-making process could be demonstrated.

(iii) There was no post-notification delay, inasmuch as, in two or three acquisition notifications, which were the subject matter of challenge in the present writ petitions, wherein one year time has been consumed in the issuance of the Section 6 notification, the delay has been duly explained by the State.

21. In Kamal Sharma, the Division Bench distinguished Shyoraj Singh noting that the said judgment failed to consider the fact that the acquisition was proposed for an integrated project and that the Division Bench did not deal with the argument that looking at the large number of tenure holders, the hearings would have resulted into the project of tremendous importance being delayed. Further, it was noted that the reasons given for justifying the invocation of the urgency clause had not been examined in the context in which they were made, and also the decision of this Court in the case of Nand Kishore Gupta and Others v. State of Uttar Pradesh and Others.¹³ was not considered.

22. The Division Bench of the Allahabad High Court while delivering the judgment in Kamal Sharma, validated the acquisition proceeding 13 (2010) 10 SCC 282; hereinafter referred to as ‘Nand Kishore’ in question and granted an enhanced compensation of 64.7% to the landowners.

23. During the course of arguments, this Court was apprised of the fact that out of total 410 writ petitioners(landowners) before the High Court, only 96 have challenged the judgment in Kamal Sharma by filing civil appeals @ special leave petitions in Batch No. 1.

24. It is in this backdrop of the conflicting decisions rendered by the Division Benches of the Allahabad High Court, that the two batches of civil appeals @ special leave petitions i.e. Batch No.1 and Batch No.2, have been preferred by the landowners and YEIDA before this Court.

SUBMISSIONS ON BEHALF OF LANDOWNERS (APPELLANTS IN BATCH NO. 1): -

25. Learned counsel representing the landowners implored the Court to grant relief in favour of the appellants as prayed for in Batch No.1 wherein lead matter is "Kalicharan and others v. The State of Uttar Pradesh and others¹⁴" and negate the challenge to the judgment in Shyoraj Singh. They advanced the following pertinent 14 supra submissions for assailing the questioned land acquisition proceedings:-

(i) That the Division Bench of Allahabad High Court, while rendering the judgment dated 26th May, 2023 in Kamal Sharma, in effect sat in appeal over the judgment dated 24th April, 2017 in Shyoraj Singh rendered by a coordinate bench of the same High Court which dealt with an identical controversy both in facts and law. It was fervently contended that the Division Bench of Allahabad High Court, while dealing with the subsequent batch of writ petitions in Kamal Sharma should have followed the judgment passed in Shyoraj Singh as a matter of judicial discipline.

(ii) That if at all the Division Bench in Kamal Sharma was of a view that Shyoraj Singh did not lay down the correct position of law, then the question of law should have been referred to a larger Bench rather than taking a divergent view in a Bench with a composition of same number of Judges.

(iii) That the land acquisition notifications under Sections 4 and 6 of the Act were dated 26th February, 2009 and 19th February 2010, respectively. The above-mentioned dates demonstrate that about one years' time was taken by the State Government for issuance of the final declaration notification under Section 6 after the proposal under Section 4 of the Act was issued and thus, there was pre and post notification delay which could not have been ignored and had to be taken into account. In this background there could not have been any justification for the dispensation of few weeks' time to the landowners to file objections under Section 5-A of the Act, on the ground of urgency. On this aspect, reliance was placed upon Radhy Shyam(dead) through LRs. and Others v.

State of Uttar Pradesh and Others¹⁵, wherein this Court observed as follows: -

“82. In this case, the Development Authority sent the proposal sometime in 2006. The authorities up to the level of the Commissioner completed the exercise of survey

and preparation of documents by the end of December 2006 but it took one year and almost three months for the State Government to issue notification under Section 4 read with Sections 17(1) and 17(4). If this much time was consumed between the receipt of proposal for the acquisition of land and issue of notification, it is not possible to accept the argument that four to five weeks within which the objections could be filed under sub-section (1) of Section 5-A and the time spent by the Collector in making enquiry under sub-section (2) of Section 5-A would have defeated the object of the acquisition.”

15 (2011) 5 SCC 553; hereinafter referred to as ‘Radhy Shyam’ Reliance in this regard was also placed on *Dev Sharan and Others v. State of Uttar Pradesh and Others*¹⁶, wherein this Court observed as below: -

“37 [Ed.: Para 37 corrected vide Official Corrigendum No. F.3/Ed.B.J./16/2011 dated 16-3-2011.]. Thus the time which elapsed between publication of Section 4(1) and Section 17 notifications, and Section 6 declaration in the local newspapers is 11 months and 23 days i.e. almost one year. This slow pace at which the government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Section 17(4) of the Act.

38. In Para 15 of the writ petition, it has been clearly stated that there was a time gap of more than 11 months between Section 4 and Section 6 notifications, which demonstrates that there was no urgency in the State action which could deny the petitioners their right under Section 5-A. In the counter which was filed in this case by the State before the High Court, it was not disputed that the time gap between Section 4 notification read with Section 17, and Section 6 notification was about 11 months.” Learned counsel for the appellants also placed reliance on *Devender Kumar Tyagi and Others v. State of Uttar Pradesh and Others*¹⁷, wherein, this Court, while dealing with a post-notification delay of almost two years, held as follows:

“28. In the facts and circumstances of the present case, it is clear that this Court, vide its order dated 17-8-2004 [(2011) 12 SCC 572], has issued a direction to the respondents to relocate the bone mills and allied industries causing environment pollution and health hazards as per the recommendations of CPCB and, inter alia, the respondents

16 (2011) 4 SCC 769 17 (2011) 9 SCC 164 were also directed to identify the area for relocation.

Pursuant to this, the respondents have filed an affidavit in the month of December 2004 specifying the construction of the Leather City Project at Hapur in Ghaziabad. Subsequently, it was only after the lapse of two years, the State Government had issued a Notification under Section 4 on 3-7-2006 and the same was published on 4-7-2006. Thereafter, the State Government took more than 17 months in order to make a declaration of the notification under Section 6 from the date of

publication of the notification under Section 4 of the LA Act. In view of the above circumstances, it is crystal clear that the government functionary has proceeded at very slow pace at two levels, that is, prior to the issuance of the notification under Section 4 and post the issuance of the notification under Section 4, for acquisition of the land for construction of the Leather City Project, which undoubtedly is a public purpose. Therefore, the above series of the events amply exhibit the lethargical and lackadaisical attitude of the State Government. In the light of the above circumstances, the respondents are not justified in invoking the urgency provisions under Section 17 of the LA Act, thereby, depriving the appellants of their valuable right to raise objections and opportunity of hearing before the authorities in order to persuade them that their property may not be acquired.

Further reliance was placed on the case of Darshan Lal Nagpal(Dead) by LR. v. Government of NCT of Delhi and Others¹⁸, wherein, this Court observed as below:

“36. It needs no emphasis that majority of the projects undertaken by the State and its agencies/instrumentalities, the implementation of which requires public money, are meant to benefit the people at large or substantially a large segment of the society. If what the High Court has observed is treated as a correct statement of law, then in all such cases the acquiring authority will be justified in invoking Section 17 of the Act and dispense with the inquiry contemplated under Section 5-A, which would necessarily result in depriving the owner of his property without any opportunity to raise legitimate objection. However, as has been repeatedly held by this Court, the invoking of the urgency provisions can be justified only if there exists real emergency which cannot 18 (2012) 2 SCC 327 brook delay of even few weeks or months. In other words, the urgency provisions can be invoked only if even small delay of few weeks or months may frustrate the public purpose for which the land is sought to be acquired. Nobody can contest that the purpose for which the appellants' land and land belonging to others was sought to be acquired was a public purpose but it is one thing to say that the State and its instrumentality wants to execute a project of public importance without loss of time and it is an altogether different thing to say that for execution of such project, private individuals should be deprived of their property without even being heard.”

(iv) That one of the grounds taken by the State for invoking the urgency clause was that there were chances of unauthorized construction/encroachments on the land subject to acquisition. This stand was questioned by placing reliance on Radhy Shyam, wherein this Court observed that it is highly unlikely that the recorded tenure holders would encroach or allow encroachments on their own land when they are admittedly in the possession of the same. The relevant extract as relied upon is quoted hereinbelow: -

“83. The apprehension of the respondents that delay in the acquisition of land will lead to enormous encroachment is totally unfounded. It is beyond the comprehension of any person of ordinary prudence to think that the landowners would encroach

their own land with a view to frustrate the concept of planned industrial development of the district.”

(v) That there was no material before the State Government to show the existence of any unforeseeable emergency warranting invocation of the urgency clause under Sections 17(1) and 17(4) of the Act, thereby denying the landowners of their right to file objections against acquisition of their lands.

(vi) That the lands under acquisition were to be utilized for commercial and residential purposes and such development work, would take ample time in planning and execution, thus there could have been no justification for the invocation of urgency clause. Reliance in this regard was placed on the following observations in Radhy Shyam:-

“80.....Even if planned industrial development of the district is treated as public purpose within the meaning of Section 4, there was no urgency which could justify the exercise of power by the State Government under Section 17(1) and 17(4). The objective of industrial development of an area cannot be achieved by pressing some buttons on the computer screen. It needs a lot of deliberations and planning keeping in view various scientific and technical parameters and environmental concerns. The private entrepreneurs, who are desirous of making investments in the State, take their own time in setting up the industrial units. Usually, the State Government and its agencies/instrumentalities would give them two to three years to put up their factories, establishments, etc. Therefore, time required to ensure compliance with the provisions contained in Section 5A cannot, by any stretch of imagination, be portrayed as delay that will frustrate the purpose of acquisition.” Reliance was also placed upon the decision of Anand Singh and Another v. State of Uttar Pradesh and Others¹⁹, wherein this Court observed as follows: -

“46. As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency under Section 17(1) are not stated in the provision itself. Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated under Section 5-A may not be held and objections of landowners/persons interested may not be considered. In many cases, on general assumption likely delay in completion of enquiry under Section 5-A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realising that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously.”

(vii) That the judgment of this Court in Radhy Shyam holds the field on the issue of invocation of urgency clause in acquisition proceedings for planned development for

commercial, residential, industrial purposes and the decision in Kamal Sharma has been rendered while glossing over the law settled in Radhy Shyam.

(viii) That the right to be heard as provided under Section 5-A of the Act is in the nature of a fundamental right and the same cannot be dispensed with, so as to justify the lackadaisical 19 (2010) 11 SCC 242 approach of the State Government. It was also contended that Section 5-A is not to be superseded ipso facto even if the provisions of Sections 17(1) and 17(2) of the Act are being invoked. Reliance in support of this contention was placed upon the decision of this Court in the case of Dev Sharan v.

State of Uttar Pradesh and Others²⁰, wherein it was held that even in cases of ‘urgency’ or ‘unforeseen emergency’, enquiry contemplated by Section 5-A cannot ipso facto be dispensed with and even if the case is covered under sub-sections (1) or (2) of Section 17, sub-Section (4) of Section 17 would not necessarily apply. The relevant extracts relied upon are as below:-

“32. In a recent judgment of this Court in Essco Fabs, (2009) 2 SCC 377, this Court, after considering previous judgments as also the provisions of Section 17 of the Act held: (SCC P. 839, para 41) “41. Whereas sub-section (1) of Section 17 deals with cases of ‘urgency’, sub-section (2) of the said section covers cases of ‘sudden change in the channel of any navigable river or other unforeseen emergency’. But even in such cases i.e. cases of ‘urgency’ or ‘unforeseen emergency’, enquiry contemplated by Section 5-A cannot ipso facto be dispensed with which is clear from sub-section (4) of Section 17 of the Act.” This Court, therefore, held that once a case is covered under sub-section (1) or (2) of Section 17, sub-section (4) of 20 (2011) 4 SCC 769 Section 17 would not necessarily apply: (SCC P. 395, para

54) “54. In our opinion, therefore, the contention of the learned counsel for the respondent authorities is not well founded and cannot be upheld that once a case is covered by sub-sections (1) or (2) of Section 17 of the Act, sub-section (4) of Section 17 would necessarily apply and there is no question of holding inquiry or hearing objections under Section 5-A of the Act. Acceptance of such contention or upholding of this argument will make sub-section (4) of Section 17 totally otiose, redundant and nugatory.”

(ix) That the Division Bench of the Allahabad High Court committed grave error in law while placing reliance upon the judgment of Nand Kishore, for denying relief to the landowners. That on a conjoint reading of paras 3 and 96 of Nand Kishore, it would become evident that the land in question therein admeasured 1604 Hectares, which was to be acquired for the construction of the Yamuna Expressway itself and it is in that background that the invocation of the urgency clause was upheld, whereas the question as to the invocation of urgency clause to acquire land for commercial, residential or industrial purpose was not posed for adjudication in Nand Kishore, although it held the acquisition to be for public purpose. Paras 3 and 96 of Nand Kishore read as follows: -

“3. The High Court, in the judgment dated 30-11-2009 passed in Nand Kishore Gupta v. State of U.P. [CMWP No. 31314 of 2009 decided on 30-11-2009 (All)] , basically pointed out that out of 12,282 landowners, 11,397 had already received their compensation under the agreement and the challenge related only to 21.03 ha out of 1604 ha of land. The High Court also took the view that the scales of justice must tilt towards the right to development of the millions who will be benefited from the road and the development of the area, as against the human rights of 35 petitioners therein, whose main complaint was that they were not heard before the declaration under Section 6 of the Act. The High Court also declined to give any direction to the State Government to consider to exempt 21.03 ha of land relating to the 35 petitioners therein on account of the fact that the construction of the road had to be made in an alignment and that alignment could not be changed. Identical view was taken in another writ petition filed by one Balbir Singh. The High Court also expressed its concern that any direction to exempt the land covered by the construction might seriously jeopardise the Project. The High Court also reiterated that the acquisition of the land for interchange of the road was the essential part of the Project, as also the construction of bridges, culverts and interchanges, which were essential for the fast-moving six-lane Expressway.

96. We are not impressed by the argument that the encroachment issue was not a relevant factor. This argument was based on the reported decision in Om Prakash v. State of U.P. [(1998) 6 SCC 1] It must be said that the actual scenario in that case was different. In that case, the Court was considering the acquisition of area of about 500 acres comprising of 437 plots, whereas, in the present case, the area to be acquired for the Expressway alone was more than 1600 ha. This is apart from the 25 million sq m of land which was liable to be acquired for the purposes of development of five land parcels. There was interlinking between the acquisition of land for the highway and the acquisition of land for establishing the five townships.”

(x) That the judgment in Radhy Shyam carves out a clear distinction by observing that the judgment in Nand Kishore related to the lands proposed to be acquired for construction of the expressway itself and not to the lands acquired for commercial, residential, and industrial purposes, for which the invocation of urgency clause was held to be untenable and bad in law.

(xi) That neither the appellants have received any amount towards compensation for acquisition of the lands nor have they parted with the possession of the subject lands, and thus, quashing of the land acquisition notification would not have any adverse impact as no development has taken place on the lands in question.

(xii) That the mere ploy of the grant of adequate compensation to the landowners with an escalation of 64.7% could not justify the grave illegalities committed by the authorities under the garb of urgent acquisition because the same cannot obviate or supersede the substantive fundamental right of the landowners to file objections against the acquisition of the privately owned lands.

SUBMISSIONS ON BEHALF OF YEIDA (RESPONDENT NO.3 IN BATCH NO. 1):-

26. Shri Tushar Mehta, learned Solicitor General of India, Shri Ranjit Kumar, Shri Gopal Jain, learned senior counsel appearing on behalf of YEIDA implored the Court to uphold the judgment passed in Kamal Sharma and to reverse the judgment passed in Shyoraj Singh as being unsustainable in the eyes of law. They advanced the following pertinent submissions seeking the above relief:-

(i) YEIDA is a statutory authority formed under Section 3 of the U.P. Industrial Area Development Act, 1976, which has been established to ensure planned development of the 'industrial development area'. In furtherance of this objective, YEIDA prepared the Master Plan of 2021 and the Master Plan of 2031 with the intent to develop the eastern side of river Yamuna by construction of a six-lane Expressway joining Noida to Agra and also for integrated development of five distinct regions along the said Expressway for residential, industrial, institutional and recreational purposes. The construction of the Jewar Airport is also a part and parcel of the very same integrated project.

(ii) That a bare perusal of the Master Plan(Phase-1-2031) clearly establishes that the land acquired for development across Yamuna Expressway, is an integrated project. The land was initially acquired for the Yamuna Expressway and thereafter, for developing land parcels alongside the Yamuna Expressway as residential townships, industrial areas, amusement zones, etc. The development is strictly being carried out in accordance with the Master Plan prepared by YEIDA.

(iii) The Yamuna Expressway is a vital project of seminal importance providing access to millions of commuters by connecting the National Capital to Agra and nearby areas.

The Yamuna Expressway is poised to become even more important with the upcoming Jewar Airport. A project of this magnitude would require the involvement of the adjoining areas which would lead to an overall development of the State.

(iv) That the legality of the acquisition of the lands in question by YEIDA for integrated and complementary planned development is no longer res integra as the same has been consistently upheld by this Court vide various judicial pronouncements over time, the landmark case being Nand Kishore.

(v) That the judgment in Nand Kishore squarely covers the controversy at hand, wherein it was observed that the planned development of 25 million square meter of land (2500 Hectares) being acquired for creation of the five zones for industry, residence, amusement zones, etc. would be complementary to the creation of the Expressway and is a part of an integrated project and it was urged that similarly in the present case, land has been acquired for the planned development of the region.

(vi) That it is settled law that the decision on invocation of urgency clause is an administrative decision requiring subjective satisfaction of the State Government and scope of judicial review in the matters of invocation of the urgency clause under Sections 17(1) and 17(4) of the Act is limited to the decision-making procedure and not to the decision itself. The Court is required to examine the record just to arrive at a satisfaction regarding existence of material to form an opinion about invoking the urgency clause.

(vii) That the controversy involved in the present case is ad idem to the facts of the case in Nand Kishore and the factors that weighed with this Court in upholding the invocation of the urgency clause in Nand Kishore, also exist in the present case, and therefore, the invocation of the urgency clause in the present case was fully justified. The Court's attention was drawn to the following factors: -

(a) Enormity of the project: The acquisition therein in 'Nand Kishore' case, involved 1604 Hectares of land affecting 12,283 farmers. Similarly, in the present case, the acquisition involves approximately 2,979 Hectares of land affecting 12,868 farmers/landowners. Thus, the present acquisition is of greater magnitude than the one considered in Nand Kishore.

(b) Likelihood of encroachments: The area for the expressway alone exceeded 1600 Hectares, not including the 25 million square meter parcel of land required for developing the five additional zones. In the present case, out of the 2,979 Hectares of land acquired, only 456.74 Hectares of land is under litigation. Therefore, there is an imminent likelihood of encroachment on 2,522.26 Hectares of land where landowners have already received compensation and YEIDA has taken the possession.

(c) Number of Landowners to be heard: The total number of landowners to be heard could delay the project further. In the present case, 12,868 landowners would need to be heard, significantly delaying the project. Only 140 landowners are before this Court (inclusive of both batches of civil appeals @ special leave petitions), claiming they were not heard before the issuance of notification under Section 6 of the Act, whereas, the others have accepted the escalated compensation of 64.7% directed to be paid by the High Court in Kamal Sharma. Thus, hearing all the landowners was bound to unnecessarily delay the developmental works of great importance without causing any real prejudice to the large number of landowners and would also lead to escalation of cost of development.

(viii) That there was sufficient material before the State Government to justify the invocation of urgency clause, and there was no malice on part of the State Government in invoking the same. Stress was laid upon the observations made in Nand Kishore, wherein it was held that the executive's subjective satisfaction in dispensing with the enquiry under Section 5-A can be subjected to judicial review only on the grounds of insufficient material to justify dispensing with the enquiry or

malice in the impugned action, neither of these elements exist in the present case.

(ix) That the Division Bench of Allahabad High Court in the case of Shyoraj Singh clearly erred while relying upon the case of Radhy Shyam to hold that the acquisition notifications are bad in law and that the urgency clause was wrongly invoked.

That Radhy Shyam is not applicable to the lands acquired for integrated planned development project at hand and is clearly distinguishable on facts as the said judgment was passed in the context of an acquisition for private purposes, serving private interests and the chunk of land was acquired in a standalone exercise for development of residential, commercial and industrial projects, unlike the present case where the acquisition is being done in the national interest for a project meant to create public infrastructure of huge magnitude. In this regard, it was submitted that Nand Kishore was distinguished in Radhy Shyam in the following terms: -

“76. In Nand Kishore Gupta v. State of U.P. [(2010) 10 SCC 282] the acquisition was upheld because the land was urgently needed for construction of Yamuna Expressway and by the time the matter was decided by this Court, huge amount had been spent on the project. As against this, the exercise of power under Sections 17(1) and/or 17(4) for the acquisition of land for residential, industrial and commercial purposes, construction of sewage treatment plant and district jails was held to be legally impermissible in Raja Anand Brahma Shah v. State of U.P. [AIR 1967 SC 1081 :

(1967) 1 SCR 373] , Narayan Govind Gavate v. State of Maharashtra [(1977) 1 SCC 133 : 1977 SCC (Cri) 49] , Om Prakash v. State of U.P. [(1998) 6 SCC 1] , Union of India v.

Krishan Lal Arneja [(2004) 8 SCC 453] , Essco Fabs (P) Ltd. v. State of Haryana [(2009) 2 SCC 377 : (2009) 1 SCC (Civ) 537] , Babu Ram v. State of Haryana [(2009) 10 SCC 115 :

(2009) 4 SCC (Civ) 69] and Anand Singh v. State of U.P. [(2010) 11 SCC 242 : (2010) 4 SCC (Civ) 423].”

(x) That this Court in Natthi v. State of U.P. & Ors.²¹ and Narendra Road Lines Pvt. Ltd. v. State of UP and Others²², has dismissed the SLPs preferred against the judgments passed by the Allahabad High Court in the self-

same acquisition while relying on the law laid down in Nand Kishore, wherein it was held that the acquisition in question in District Gautam Budh Nagar through YEIDA is for planned development and the subject lands are contiguous to the land parcels, which were acquired for the purpose of residential, industrial, amusement, etc. along with Yamuna Expressway.

(xi) The attention of the Court was also drawn to the fact that the SLP in Natthi v. State of U.P. & Ors.²³ was dismissed on 9th (Supra, Note 22) May, 2011, just a month after the decision of Radhy Shyam which was delivered on 15th April, 2011.

(xii) That another Division Bench of the Allahabad High Court in the case of Yogesh Kumar v. State of U.P.²⁴ considered the applicability of Radhy Shyam on invocation of urgency clause for planned development through YEIDA, and vide judgment dated 1st March, 2013, it was held that in view of judgment in Natthi v. State of U.P. Thru. Secr. Industrial Devp. & Ors.²⁵, the decision in Radhy Shyam will have no application on the present acquisition. The decision of Allahabad High Court in Yogesh Kumar was also affirmed by this Court while dismissing the SLP²⁶ by a Bench presided over by Hon'ble Mr. Justice G.S. Singhvi (who authored Radhy Shyam) vide order dated 23rd September, 2013.

(xiii) That it was correctly held by the Division Bench of Allahabad High Court in Kamal Sharma that the right of the tenure holders to object against the acquisition provided under Section 5-A of the Act cannot be said to be a fundamental ²⁴ CMWP No.10782/2013, hereinafter referred to as 'Yogesh Kumar' ²⁵ Writ-C No. 20585 of 2010, hereinafter referred to as 'Natthi' Special Leave to Appeal (Civil) No. CC 16505/2013 right or a right akin to fundamental right protected by the Constitution of India.

(xiv) That the Division Bench of the Allahabad High Court in Kamal Sharma has meticulously reviewed the material on record, and held that the same justified the invocation of the urgency clause, recording its conclusions as follows:

(a) The lands of nine villages were acquired through different notifications issued over a span of two years between 26th February, 2009 to 22nd March, 2011.

(b) Majority of the declaration notifications were issued in a gap of 3 to 4 months.

(c) It was specifically mentioned in the Certificate of the Collector that the acquisition of different parcels of land was being proposed as contiguous part of the project. If an opportunity of hearing under Section 5-A of the Act was granted, the same would have resulted in legal proceedings and eventual non-availability of contiguous land which would have hampered the execution of the integrated project in a time bound manner. The original record of the State provides categorical statements to this effect.

(d) The aforesaid decision was taken on account of the enormousness of the project in question and the area of the land sought to be acquired.

He thus urged that the Division Bench of the Allahabad High Court, therefore, rightly held that the invocation of the urgency clause was not a mechanical exercise and was undertaken pursuant to the subjective satisfaction of the State Government being arrived at after due application of mind to material available on record.

(xv) That the judgment in Shyoraj Singh does not lay down good law and is liable to be set aside, since it failed to take note of the earlier Division Bench decisions of the Allahabad High Court in the cases of Natthi²⁷, Narendra Road Lines Pvt. Ltd. v. State of U.P. & Others²⁸ and Yogesh Kumar²⁹,

wherein the validity of self-same land acquisition for integrated planned development by YEIDA was upheld. Ignoring an earlier judicial precedent rendered by a Bench presided by co-equal number of judges and taking a totally 28 Civil Misc. Writ Petition No. 29682 of 2009, hereinafter referred to as 'Narendra Road Lines' 29 supra contrary view itself amounts to a fundamental error rendering the subsequent view per incuriam as held in case of Karnail Singh v. State of Haryana³⁰.

(xvi) That there is no pre or post notification delay in the present acquisition inasmuch as there are only three notifications, where a period of nearly one year has been consumed in issuing the Section 6 notification. For other seven notifications, Section 6 notification was issued within two to four months.

Learned Solicitor General concluded his submissions urging that it is now futile to oppose the acquisition, particularly when the same is unequivocally accepted by all except a few, inasmuch as the majority of the landowners have accepted the enhanced compensation without raising any further challenge to the acquisition. Learned Solicitor General urged that the entire process was wholly transparent and that there was pressing necessity for acquisition of lands, considering the public purpose involved. He thus implored the Court to accept the appeals filed by the YEIDA and dismiss the appeals filed by the landowners. 30 (2009) 8 SCC 539

27. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgments and the material placed on record.

DISCUSSION AND FINDINGS: -

28. The issues which arises for our consideration in the present batches of appeal are as follows: -

(i) Whether the present acquisition is a part of the integrated development plan of 'Yamuna Expressway' undertaken by respondent No.3-YEIDA?

(ii) Whether the application of Sections 17(1) and 17(4) of the Act was legal and justified in the instant case, thereby justifying the decision of the State Government to dispense with the enquiry under Section 5-A of the Act?

(iii) Whether the view taken by the Division Bench of the Allahabad High Court in Kamal Sharma validating the questioned acquisition while relying upon Nand Kishore lays down the correct proposition of law or whether the Division Bench in the case of Shyoraj Singh was justified in applying the principles laid down in Radhy Shyam and quashing the acquisition proceedings in question?

29. Before advertng to the above issues, we may take note of the fact that the State Government had formulated a "Policy for Planned Development along the Taj Expressway³¹" and the notification to this effect was issued by the Infrastructure & Industrial Development Commissioner, Government of Uttar Pradesh on 29th December, 2007. The Policy dealt with the formation of Special Development Zone³² and the development thereof. As per clause 3.2 of the said Policy, the land use of SDZ is

divided in the following terms: -

“3.2. Land use of SDZ (special development zone) The permissible break-up of the total land area under SDZ for different activities shall be as under:

%age of total area of SDZ A. Core Activity Sports Not less than 35% (including road & open spaces) B. Other activities

(i) Commercial Not more than 20%

(ii) Institutional & amenities Not less than 5%

(iii) Roads, open and Not less than 25% Circulation areas

(iv) Residential including Not less than 15% Group Housing and Plotted Development Area ” In short, ‘Policy’ 32 In short ‘SDZ’.

30. A bare perusal of the aforesaid clause makes it clear that while the development of roads and open spaces which was to constitute 35% of the land area was considered to be the core activity, the allied activities such as commercial, institutional & amenities, roads, open and circulation areas, residential including group housing and plotted development areas were to constitute the remaining 65% of the land under the SDZ. Hence, undeniably, the authorities were required to develop the entire SDZ in an integrated manner. This aspect was precisely taken note of by this Court in the case of Nand Kishore. The relevant extracts from the judgment of Nand Kishore are reproduced hereinbelow for the sake of ready reference: -

“57. The Expressway is a work of immense public importance. The State gains advantages from the construction of an expressway and so does the general public. Creation of a corridor for fast-moving traffic resulting into curtailing the travelling time, as also the transport of the goods, would be some factors which speak in favour of the Project being for the public purpose. Much was stated about the 25 million sq m of land being acquired for the five parcels of land. In fact, in our opinion, as has rightly been commented upon by the High Court, the creation of the five zones for industry, residence, amusement, etc. would be complementary to the creation of the Expressway.

58. It cannot be forgotten that the creation of land parcels would give impetus to the industrial development of the State creating more jobs and helping the economy and thereby helping the general public. There can be no doubt that the implementation of the Project would result in coming into existence of five developed parcels/centres in the State for the use of the citizens. There shall, thus, be the planned development of this otherwise industrially backward area. The creation of these five parcels will certainly help the maximum utilisation of the Expressway and the existence of an Expressway for the fast-moving traffic would help the industrial culture created in

the five parcels. Thus, both will be complimentary to each other and can be viewed as parts of an integral scheme. Therefore, it cannot be said that it is not a public purpose.”

31. Learned counsel for the landowners sought to draw a distinction, urging that Nand Kishore only dealt with the issue as to whether the acquisition was for public purpose and not with the issue as to whether the invocation of the urgency clause for commercial, residential, industrial purpose was justified. However, we are of the view that this contention is bereft of merit as no such distinction is permissible.

32. The core question which requires this Court’s consideration is whether the Division Bench of the Allahabad High Court in the case of Shyoraj Singh was justified in relying upon Radhy Shyam, so as to quash the acquisition notification pertaining to the development of the land adjoining the Yamuna Expressway. The relevant extracts from Radhy Shyam which are reproduced supra would make it clear that in the said case, this Court was considering a controversy relating to the land acquisition for the purpose of planned industrial development in District Gautam Budh Nagar through Greater Noida Industrial Development Authority. Hence, the project did not contemplate a planned and integrated development of an Expressway and the adjoining areas. It was a standalone project pertaining to the development in industrial Gautam Budh Nagar. However, it cannot be gainsaid that Yamuna Expressway is a vital heartline providing access to millions of commuters from National Capital Delhi to Agra. The Expressway also connects the prestigious upcoming Jewar Airport to adjoining areas. To assume that the Yamuna Expressway is a simple highway without any scope for simultaneous development of the adjoining lands for commercial, residential and other such activities would be unconceivable. A project of such magnitude and enormity would definitely require the involvement of the adjoining areas which would lead to an overall development of the State of Uttar Pradesh at large.

33. As observed above, the purpose behind the acquisition was unquestionably the integrated development of lands abutting the Yamuna Expressway. The acquisition of the lands for the Expressway could not be isolated or separated from the acquisition of the abutting lands. This was precisely held in the case of Nand Kishore.

34. It may be noted that the entire edifice of Shyoraj Singh is based on Radhy Shyam, wherein a two-Judge Bench of this Court decided the controversy arising from land acquisition pertaining to the planned industrial development in the District Gautam Budh Nagar. Another Division Bench of this Court considered the acquisition pertaining to the Yamuna Expressway in the case of Natthi. Placing reliance on Nand Kishore, the Division Bench of the same composition as in Radhy Shyam vide order dated 9th May, 2011 rejected the special leave petition(s) laying challenge to the invocation of the urgency clause in the self-same acquisition proceedings.

35. Much stress was laid by the learned counsel for the landowners on the issue that the Division Bench while deciding the impugned judgment in the case of Kamal Sharma could not have taken a different view from Shyoraj Singh and if at all, there was any doubt on the correctness of the view taken in Shyoraj Singh, then, the question of law was mandatorily required to be referred to a larger

Bench. We feel that the said argument is fallacious on the fact of it. Much prior to Shyoraj Singh's decision, three different Division Benches of the Allahabad High Court by detailed judgments in the cases of Natthi, Narendra Road Lines and Yogesh Kumar had already affirmed the validity of invocation of the urgency clause in the land acquisition notifications for the integrated development plan of 'Yamuna Expressway' by respondent No.3-YEIDA. It is trite to mention that in Shyoraj Singh, the Division Bench failed to consider the earlier Division Bench judgments in the cases of Natthi, Narendra Road Lines and Yogesh Kumar. In this background, the view taken by the Division Bench in the case of Shyoraj Singh is per incuriam, rather than that in Kamal Sharma.

36. At the cost of repetition, it may be mentioned that the Division Bench judgments rendered by the Allahabad High Court in the cases of Natthi, Narendra Road Lines and Yogesh Kumar have been affirmed by this Court with the dismissal of SLPs assailing the impugned judgments in those cases.

CONCLUSION

37. In the wake of the above discussion, we have no hesitation in holding that the Division Bench of the Allahabad High Court correctly interpreted the legal position while deciding the batch of writ petitions in the case of Kamal Sharma and the judgment in the case of Shyoraj Singh does not lay down the correct proposition of law.

38. The issues framed above are answered in the following terms:

(i) Whether the present acquisition is part of the integrated development plan of the 'Yamuna Expressway' undertaken by respondent No. 3-YEIDA?

- Yes, the present acquisition forms part of the integrated development plan for the Yamuna Expressway initiated by YEIDA. As observed in the case of Nand Kishore, the development of land parcels for industrial, residential, and recreational purposes is complementary to the construction of the Yamuna Expressway. The objective of the acquisition is to integrate land development with the Yamuna Expressway's construction, thereby promoting overall growth serving the public interest. Consequently, the Expressway and the development of adjoining lands are considered to be inseparable components of the overall project.

(ii) Whether the application of Sections 17(1) and 17(4) of the Act was legal and warranted in the instant case, thereby justifying the Government's decision to dispense with the inquiry under Section 5-A of the Act?

- Yes, the invocation of Sections 17(1) and 17(4) of the Land Acquisition Act, 1894, was legal and justified in this case. The urgency clause was applied in accordance with the planned development of the Yamuna Expressway, as held in Nand Kishore.

(iii) Whether the view taken by the Division Bench of the Allahabad High Court in Kamal Sharma while relying on Nand Kishore lays down the correct proposition of law, or whether the Division Bench in Shyoraj Singh was justified in applying the principles laid down in Radhy Shyam and

quashing the acquisition proceedings in question?

- The view expounded by the Division Bench in Kamal Sharma, which relied upon Nand Kishore, sets forth the correct proposition of law, and the judgment of the High Court in Shyoraj Singh, which relied on Radhy Shyam, did not present a correct legal interpretation. The judgment in Shyoraj Singh is set aside as it does not lay down good law and was passed while overlooking at the earlier precedents, rendering it per incuriam.

39. The High Court while deciding Kamal Sharma extensively considered the factual matrix and also examined the original records of the State Government to arrive at the satisfaction that the invocation of the urgency clause was absolutely justified with regard to the acquisition in question. The High Court also exhaustively considered the entire sequence of judicial pronouncements in respect of the acquisition in question before arriving at the aforesaid conclusion and acted in an equitable manner while affirming the acquisition proceedings and directing the grant of additional compensation. We appreciate the endeavour made by the High Court to resolve the controversy objectively and equitably and grant our full imprimatur to the judgment in Kamal Sharma.

40. Now, we are called upon to consider as to whether the escalated compensation formula as arrived at by the Division Bench of the High Court in the case of Kamal Sharma would subserve the ends of justice or the landowners whose lands have been acquired would be entitled to better compensation.

41. It is pertinent to note that the overwhelming majority of landowners have refrained from seeking judicial intervention in this matter, as manifested by the fact that only 140 out of 12,868 landowners(covered in both batches of civil appeals @ special leave petitions) have opted to challenge the acquisition by approaching this Court. This indicates that the majority of the landowners have accepted the escalated compensation granted by the High Court in Kamal Sharma.

42. This Court, in the cases of Savitri Devi v. State of Uttar Pradesh and Others³³, Sahara India Commercial Corporation Limited and Others v. State of Uttar Pradesh³⁴, and Noida 33 (2015) 7 SCC 21 34 (2017) 11 SCC 339 Industrial Development Authority v. Ravindra Kumar and Others³⁵, despite holding the invocation of the urgency clause under Sections 17(1) and 17(4) of the Act to be illegal, nonetheless upheld the acquisition proceedings and directed enhancement of compensation so as to compensate the land owners. However, in the present case, we have concluded that the action of the State in invocation of the urgency clause is in consonance with the law.

43. The Division Bench of the Allahabad High Court, while delivering its decision in Kamal Sharma has already granted additional compensation of 64.7% to the landowners, to be offered as 'No Litigation Bonus' in consonance with the Government order dated 4th November, 2015, thus there is no scope to direct further enhancement in compensation.

44. In light of the Government order dated 4th November, 2015 and the precedents set in Savitri Devi v. State of Uttar Pradesh³⁶ and Yamuna Expressway Industrial Authority v. Shakuntla Education and Welfare Society³⁷, it is directed that 64.7% enhancement in compensation shall

apply in rem, ensuring uniform benefits to all affected landowners under the present land acquisition. 35 (2022) 13 SCC 468 36 supra 37(2022) SCC OnLine SC 655

45. The question of non-issuance of the final award and its effect on the acquisition is left open ensuring that any affected party would retain the right to challenge or seek appropriate remedy on this specific issue independently, in accordance with law.

46. As a result of the above discussion, the appeals filed by the landowners i.e. Batch No. 1, are dismissed, and the appeals filed by YEIDA i.e. Batch No. 2, are hereby allowed.

47. No order as to costs.

48. Pending application(s), if any, shall stand disposed of.

.....J. (B.R. GAVAI)J. (SANDEEP MEHTA) New Delhi;

November 26, 2024.