Hamid Ali Khan (D) Thr. Lrs. vs State Of U.P. . on 23 November, 2021

Author: K.M. Joseph

Bench: S. Ravindra Bhat, K.M. Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1267 OF 2012

HAMID ALI KHAN (D) THROUGH LRS. & ANR .…APPELLANT(S)

VERSUS

STATE OF U.P. & ORS. …RESPONDENT(S)

JUDGMENT

K.M. JOSEPH, J.

1. The original appellants who stand substituted by their legal representatives unsuccessfully challenged notifications dated 11.4.2008 and 9.4.2009 issued under the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). By virtue of the first notification the powers under Section 4 and 17(4) of the Act came to be invoked in regard to the property of the appellants. The Division Bench by the impugned judgment dismissed the writ petition.

2. A notification under Section 4(1) of the Act dated 13:23:42 IST Reason:

> 8.10.2004 coupled with notification under 17(4) was issued in regard to 52.361 hectares of land for the construction of a residential colony under the name of Bulandshhar Khurja Development Authority, Bulandshehar. Plot No.881 and 914 belonging to appellants children were included. The appellants did not raise any objection as the requirement of Section 5A of the Act stood dispensed with. Declaration under Section 6 of the Act was published on 7.10.2005. It is the specific case of the appellants that despite the urgency clause being invoked, the possession was taken only in January 2006. The award was passed on 29.4.2009 only for plot 914 (belonging to the children of appellants). In regard to plot No. 881 which was also acquired, the compensation was not paid, it was averred. It is stated that till date on the spot neither any construction under the residential scheme has been started nor it 'appears to be' in the near future. The writ petition it must be remembered was filed in the year 2009. Even the allotment process, it is averred, was not started in

> regard to 52.81 hectares. Writ petitioners-appellants alleged that they were running a cattle market in Sy.880 and Sy.893.

It is their case that in order to grab more land, the second respondent namely, the Authority started proceeding to acquire more land allegedly needed for the Commercial cum Residential Scheme which included the property in question. On 6.1.2006 the possession of the lands acquired earlier were taken. Allegation of demand for money by respondent no.3 is made if the appellants wanted plots 880 and 893 to be exempted. On 10.10.2006, the respondent no.2(Authority) wrote a letter to the Under Secretary about the existing construction on the land. In the letter dated 6.10.2006 and 10.10.2006 there is denial of existence of any cattle market and declaration under Section 143 of UP Zamindari Abolition & Land Reforms Act, 1950 in regard to Plot No.880 and 893. It is complained that the said letters gave a wholly false and incorrect report to the State Government and District Magistrate respectively. Appellants-Writ Petitioners filed representation dated 18.12.2006. They filed writ petition No.12379 of 2007 challenging the letters of the Collector dated 6.10.2006 and that of Vice Chairman of the Authority dated 10.10.2006. The said writ petition was however dismissed as withdrawn on 10.9.2008 when the impugned notification under Section 4 and 17(4) was issued on 11.4.2008. There is reference to the letters dated 3.1.2008, 8.2.2008 and 8.3.2008. On 27.3.2008 it is alleged that the 3rd respondent again sent false information that there are 13 houses over the land in dispute which was again false and against the spot position (Annexure 14 in W.P.). Reliance was placed on the layout plan, the photocopy of which is annexed in Annexure 15. It was contended on the strength of the same that plot No.880 and plot No.893 are situated at the end of Khurja city facing the Aligrah-Khurja National Highway, that is, the G.T. Road and it is not in the centre of the scheme as alleged by respondent No.3 in his report. It is specifically averred that plot No.880 and plot No.893 are not located in the centre of the scheme as alleged in the report dated 6.10.2006 and 10.10.2006. They are alleged to be located at the one end of the city facing G.T. Road. If a huge boundary wall is erected, the plots can be separated from the residential area without disturbing the expansion plan of the scheme. They are ready to put up the wall. There is also no need for plots in question for the alleged expansion. There is reference to the letter dated 29.3.2008 written by the 3rd respondent to the effect that due to the nature of land it was exempted from the acquisition made earlier for the main scheme. It is alleged that based on the wrong contradictory information sent by the vice Chairman, the State Government issued the impugned notification dated 11.4.2008 purporting to be under section 4 of the Act and also invoking the urgency clause under Section 17(4) taking away the right conferred under Section 5A of the Act. Respondent No.1 also issued notification dated 9.4.2009 invoking Section 17(4) of the Act.

3. A short counter affidavit was filed on behalf of the 2nd Respondent Authority. Therein the case set up is as follows:

> The Development Authority under the notifications issued under 2004 and 2005 has constructed roads and dividers for approaching all the plots which are being sold as developed plots for making residential and commercial construction.
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> The Authority also developed trunk sewer line which would connect sewer line with the buildings to be constructed by the purchasers. The further development carried

> out is pointed out to be electrification of the colony by getting poles fixed along with roads. A sub-station of 33 KVA was also got constructed. A copy of the chart of the detailed development and construction was produced along with the affidavit. Water supply system and also an overhead tank of 2000 kilolitres was also constructed. Development work it is stated was completed in Rahankhand, Madhavkhand, Udhavkhand, Govindkhand and Keshavkhand. In the remaining parts development work is going on. Nearly Rs. 20 crores was already spent. From the plots advertised, 1016 applicants were allotted developed plots, 60 of whom have got sale deeds registered in their names. Five per cent of the total land to be developed was to be allotted for the persons living below the poverty line and landless persons had to be allotted land free of cost. Poor persons of city living below poverty line are to be given constructed houses in terms of a scheme, and towards the same construction work was being made over 5% of the land. It is thereafter stated that for the development of the compact colony, it was considered essential to acquire the land involved in the writ petition. The appellant-writ petitioners filed a rejoinder affidavit. It is inter alia stated that the theory of additional requirement to supplement the earlier acquisition of 2004-2005 was a farce.

4. A perusal of the impugned judgment of the Division Bench reveals that two submissions alone were made on behalf of the apellants. The second submission was that there was no urgency to dispense with the inquiry under Section 5A of the Act. The Division Bench dealt with the submission in the following manner:

> "A short counter affidavit has been filed by the Authority showing that the development work has been done for the Yojna. The rod, dividers, sewer line, water line, electric poles, and electric sub station have been constructed. The plots have been allotted. The total bond money for the Yojna is Rs.24.09 crores. Out of this amount the most of development has been done and Rs.19.74 crores have been disbursed. A rejoinder affidavit has been filed but there is no specific denial of the same. It is not correct to say that no work has been done. The satisfaction regarding urgency is not vitiated on this account."

5. The first submission was based on the Government Order which interdicted the acquisition of land having an area less than 10 acres. This is rejected as the government order was found to be a mere guideline.

Thereafter it is noted:

> "8. A map of the sport has been annexed along with the writ petition. A detailed map was also produced before the Court. The map shows that the property in dispute is covered from three side by the land of the Yojna and on the fourth side, there is road. It shows that the land is necessary for proper implementation of the Yojna, it is eminently suited.

> 9.the petitioner run a cattle market over the property in dispute. It may not be appropriate to run it between residential area. However, compensation be provided expeditiously so that the petitioner may make alternative arrangements." The writ petition was dismissed.

6. We heard Mr. Abhay Yadav, learned counsel on behalf of the appellant and Mr. R.K. Raizada, learned senior counsel for the first respondent and Shri Ravindra Kumar, learned Counsel for the Second Respondent.

7. Learned counsel for the appellants no doubt contended that the property in question was excluded from the first acquisition. There was no need to acquire the property and he further contended that deprivation of the right under Section 5A was wholly unjustified. He adverted to the map and pointed out that the property in question was not in the middle of the Scheme area and, in fact, no work was actually done pursuant to the first notifications. Referring to the dates on which events took place, he would contend that the invoking of the urgency powers and dispensing with the inquiry under Section 5A was entirely unjustified. It is the contention of the appellants that small pieces of land could not have been acquired in subsequent acquisition without any genuine need much less for the alleged purpose of preventing any particular use that is unauthorised construction and or existence of cattle market. There is no imminent requirement. It is a case of mala fides. The appellants lay store by Om Prakash And Another v. State OF U.P. And Others1, Anand Singh And Another v. State Of Uttar Pradesh And Others2 and Radhy Shyam (dead) through LRS. and Others v. State of Uttar Pradesh and Others3.

8. Per contra, Mr. Ravindra Raizada learned Senior Counsel appearing on behalf of the first respondent, on the other hand contended that there was a public need and the enquiry under Section 5A was dispensed with on the basis of proper material. He would contend that the jurisdiction of the writ court to judicially review the decision taken under Section 17 to dispense with Section 5A was limited. The decision rests on the subjective satisfaction of the Authority. He also produced additional documents which contain the inputs allegedly relied upon to justify the dispensing with the inquiry under Section 5A of the Land Acquisition Act, 1894.

1998 (6) SCC 1 2010 (11) SCC 242 2011 (5) SCC 553

9. Counter Affidavit is filed by the Second Respondent. In the written submission based on the same the following stand is made.

The present case is concerned with the Master Plan of Khurja 2001. The town of Khurja is an important town in the Delhi Howrah Line. The town known for its pottery work witnessed population growth of 22.5% between 1991-2001. It caused an extreme housing shortage.

In a meeting held on 03.05.2002 it approved a proposal to acquire 52 hectares of land for the Kalindi Kunj Residential Scheme. After the approval of the scheme the appellants unauthorisedly constructed 13 number of shops. There were notices issued in this regard. The state government called upon the second respondent to deposit by a letter dated 24.09.2003 Rs. 2,29,17,8000

representing 10 percent of the appropriate compensation. The collector sent a proposal on 08.10.2004 recommending the invoking of the urgency clause. At that time the plots in controversy in this case that is plot no. 880 and 893 were left out because the appellants then represented that there was a Masjid and Petrol Pump in the said plots. It was not a case where the plots in question were included and then excluded by the declaration. The NCRPB prepared the Master Plan on 13.12.2004 for this city. The NCRPB sanctioned a loan on Rs.57.34 crores for the Kalindi Kunj Residential Scheme having a total area of 55.453 hectares. The Respondent no. 2 was incurring interest liability of Rs. 82000/- per day. The Kalindi Kunj Scheme was intended to have a model infrastructure and amenities. The Second Respondent deposited the total amount of Rs. 25 crores by December pursuant to letter dated 30.12.2004 issued by the land acquisition officer. The Regional Plan 2021 of the NCR came to be approved on 17.09.2005. This included the U.P. Sub Regional Plan inter alia taking in the city of Khurja. The Section 6 declaration was issued on 17.10.2005. On 08.02.2008 the State government called upon the second respondent to explain why an area of 2.692 hectare was required. The second respondent responded by pointing out that the land was sought to be acquired as part of the residential scheme and the land falls in the midst of the development area. On 11.04.2008 the department recommended for approval of sanction by the Minister which was granted and the notification was issued in respect of the properties in dispute. On 11.04.2008 notification under Section (4) read with Section (17) was issued. The appellants did not challenge this notification. The notification under Section 6 read with Section 17 was issued on 09.04.2009. The Writ Petition was filed by the appellant on 20.05.2009. It is the further contention of the Second Respondent that the Writ was dismissed on 28.05.2009. On 06.07.2009 the SLAO offered possession of the land. It was taken over by the State and handed over to the Second Respondent on 27.07.2009. Land was mutated in its name on 16.09.2009. While issuing notice on 06.11.2009, this Court granted status quo. Housing has been accepted as a public purpose. Reliance is placed on the Constitution Bench Decision in 1975 (1) SCR 802. It is contended that there is delay and latches in so far as the notification dated 11.04.2008 was challenged only on 20.05.2009. What is relevant is the decision-making process. The land is lying fully vacant with no construction. The appellants are not residing thereon. The only use is to put it for holding a cattle fair which use would be contrary to public interest and environment. With reference to the state of the case law the second respondent seeks to essentially draw support from State of U.P. V. Smt. Pista Devi and others4 and Chameli Singh and others v. State of U.P. And Another5. Radhey Shyam (supra) is distinguishable. It is contended that in the said case there was special allegation of discrimination. In the present case there is no case of discrimination. There is no case of malafides. There is no allegation of malafides. It is contended that the decision in Radhey Shyam case (supra) did not discuss the dicta in Rajasthan Housing Board and Others v. Shri Kishan and Others6. It is further contended that inviting objection in the present case would have been an empty formality. This is for the reason that the appellant has not come out with any objection either in the writ petition or the (1986) 4 SCC 251 (1996) 2 SCC 549 (1993) 2 SCC 84 SLP which they would have advanced in the event a hearing under Section 5A took place. The project had to be completed in a time bound manner. The land was required under the supplementary plan. This is clear from the map produced before the High Court. The concept of prejudice is pressed into service to contend that appellants would not be prejudiced. It is further contended that urgency in the present case continues. Free plots are allotted to landless etc. though it is subject to a limit of 5 percent of the total area. Lastly it is contended that the land of the appellants fall in the midst of the development scheme. It is

contended that the land in plots no. 880 and 893 is required for widening of the road of NH 9, school, park, health care centre and creation of 26 nos. of residential plots of 160 square meter size and 10 plots of 200 square meter size etc. THE STATE OF THE LAW REGARDING SECTION 5A BEING DISPENSED WITH

10. In Narayan Govind Gavate and Others v. State of Maharashtra and Others7, a Bench of 3 learned Judges (1977) 1 SCC 133 was dealing with a notification issued under Section 17(4). The public purpose recited in the notification was development and utilisation of the land as a residential and industrial area. The lands were described as waste and arable land and urgency provision was invoked resulting in the notification being issued. This court inter alia held:

> "10. It is true that, in such cases, the formation of an opinion is a subjective matter, as held by this Court repeatedly with regard to situations in which administrative authorities have to form certain opinions before taking actions they are empowered to take. They are expected to know better the difference between a right or wrong opinion than courts could ordinarily on such matters. Nevertheless, that opinion has to be based upon some relevant materials in order to pass the test which courts do impose. That test basically is: Was the authority concerned acting within the scope of its powers or in the sphere where its opinion and discretion must be permitted to have full play? Once the court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material, however meagre, on which it could reasonably base its opinion, the courts should not and will not interfere. There might, however, be cases in which the power is exercised in such an obviously arbitrary or perverse fashion, without regard to the actual and undeniable facts, or, in other words, so unreasonably as to leave no doubt whatsoever in the mind of a court that there has been an excess of power. There may also be cases where the mind of the authority concerned has not been applied at all, due to misunderstanding of the law or some other reason, to what was legally imperative for it to consider.
>
> 24. Coming back to the cases before us, we find that the High Court had correctly stated the grounds on which even a subjective opinion as to the existence of the need to take action under Section 17(4) of the Act can be challenged on certain limited grounds. But, as soon as we speak of a challenge we have to bear in mind the general burdens laid down by Sections 101 and 102 of the Evidence Act.

It is for the petitioner to substantiate the grounds of his challenge. This means that the petitioner has to either lead evidence or show that some evidence has come from the side of the respondents to indicate that his challenge to a notification or order is made good. If he does not succeed in discharging that duty his petition will fail.

30. In the cases before us, if the total evidence from whichever side any of it may have come, was insufficient to enable the petitioners to discharge their general or stable onus, their petitions could not succeed. On the other hand, if, in addition to the bare assertions made by the petitioners, that

the urgency contemplated by Section 17(4) did not exist, there were other facts and circumstances, including the failure of the State to indicate facts and circumstances which it could have easily disclosed if they existed, the petitioners could be held to have discharged their general onus.

40. In the case before us, the public purpose indicated is the development of an area for industrial and residential purposes. This, in itself, on the face of it, does not call for any such action, barring exceptional circumstances, as to make immediate possession, without holding even a summary enquiry under Section 5-A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries under Section 5-A of the Act to be completed without any impediment whatsoever to the execution of the scheme. Therefore, the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry under Section 5-A of the Act.

42. All schemes relating to development of industrial and residential areas must be urgent in the context of the country's need for increased production and more residential accommodation. Yet, the very nature of such schemes of development does not appear to demand such emergent action as to eliminate summary enquiries under Section 5-A of the Act. There is no indication whatsoever in the affidavit filed on behalf of the State that the mind of the Commissioner was applied at all to the question whether it was a case necessitating the elimination of the enquiry under Section 5-A of the Act. The recitals in the notifications, on the other hand, indicate that elimination of the enquiry under Section 5-A of the Act was treated as an automatic consequence of the opinion formed on other matters. The recital does not say at all that any opinion was formed on the need to dispense with the enquiry under Section 5-A of the Act. It is certainly a ease in which the recital was at least defective. The burden, therefore, rested upon the State to remove the defect, if possible, by evidence to show that some exceptional circumstances which necessitated the elimination of an enquiry under Section 5-A of the Act and that the mind of the Commissioner was applied to this essential question. It seems to us that the High Court correctly applied the provisions of Section 106 of the Evidence Act to place the burden upon the State to prove those special circumstances, although it also appears to us that the High Court was not quite correct in stating its view in such a manner as to make it appear that some part of the initial burden of the petitioners under Sections 101 and 102 of the Evidence Act had been displaced by the failure of the State to discharge its duty under Section 106 of the Act. The correct way of putting it would have been to say that the failure of the State to produce the evidence of facts especially within the knowledge of its officials, which rested upon it under Section 106 of the Evidence Act, taken together with the attendant facts and circumstances, including the contents of recitals, had enabled the petitioners to discharge their burden under Sections 101 and 102 of the Evidence Act." (Emphasis supplied)

11. In Pista Devi (supra), a Bench of two learned Judges came to consider the case involving dispensing with the enquiry under Section 5A of the Act. The court noted the case related to Meerut city located in a densely populated part of the Uttar Pradesh which was found to be growing very fast. The problem of town planning and urban development had to be tackled. The Collector on the basis of proposal sent to him by the Meerut Development Authority wrote letter dated 13.12.1979 to the Commissioner and Secretary, Housing and Urban Development, Uttar Pradesh regarding

acquisition of approximately 412 acres for a Housing Scheme. There was an acute shortage of houses, it was found. The collector gave the requisite certificate. The Government published a notification under section 4(1) of the Act and also dispensed with the enquiry under Section 5A which was published on 12th July, 1980. This was followed up by the declaration under Section 6 on 1.5.1981. The possession came to be taken and handed over to the Meerut Development Authority in July, 1982. It is in these circumstances that the notification under Section 17 of the Act was challenged. This Court distinguished Narayan Govind Gavate (supra) in the following words:

"..The provision of housing accommodation in these days has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that in the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to invoke Section 17(1) of the Act and to dispense with the compliance with Section 5-A of the Act. Perhaps, at the time to which the decision in Narayan Govind Gavate v. State of Maharashtra [(1977) 1 SCC 133 : 1977 SCC (Cri) 49 : AIR 1977 SC 183 : (1977) 1 SCR 763] related the situation might have been that the schemes relating to development of residential areas in the urban centres were not so urgent and it was not necessary to eliminate the inquiry under Section 5-A of the Act. The acquisition proceedings which had been challenged in that case related to the year 1963. During this period of nearly 23 years since then the population of India has gone up by hundreds of millions and it is no longer possible for the Court to take the view that the schemes of development of residential areas do not "appear to demand such emergent action as to eliminate summary inquiries under Section 5-A of the Act...".

7....In a case of this nature where a large extent of land is being acquired for planned development of the urban area it would not be proper to leave the small portions over which some super-structures have been constructed out of the development scheme. In such a situation where there is real urgency it would be difficult to apply Section 5-A of the Act in the case of few bits of land on which some structures are standing and to exempt the rest of the property from its application. Whether the land in question is waste or arable land has to be judged by looking at the general nature and condition of the land..." (Emphasis supplied)

12. Thus, a discordant note came to be struck in Pista Devi (supra). In Rajasthan Housing Board (supra), again a Bench of two learned Judges was dealing with a notification to acquire a total of 2570 bighas for the benefit of the Rajasthan Housing Board. The notification dated 13.01.1982 under Section 4(1) of the Rajasthan Act was followed by a notification dated 09.02.1982 dispensing with enquiry under Section 5 (a). Possession was taken over according to the Government on 24.05.1982 and 26.05.1982. This Court relied upon Pista Devi (supra) and opined that the views expressed in said judgment as contained in paragraph 7 represented the correct view. The paragraph which is apposite to the controversy in our case is paragraph

14. "14. Shri Thakur further argued that the construction of houses by Housing Board is not of such urgency as to call for the invocation of the said power. We are not satisfied. Firstly, on this question the decision of the Rajasthan High Court is against the writ petitioners. The learned Single Judge negatived it as well as the Division Bench following the opinion of the third Judge. Secondly, we are satisfied that there was material before the Government in this case upon which it could have and

did form the requisite opinion that it was a case calling for exercise of power under Section 17(4). The learned Single Judge has referred to the material upon which the Government had formed the said opinion. The material placed before the Court disclosed that the Government found, on due verification, that there was an acute scarcity of land and there was heavy pressure for construction of houses for weaker sections and middle income group people; that the Housing Board had obtained a loan of Rs 16 crores under a time-bound programme to construct and utilise the said amount by March 31, 1983; that in the circumstances the Government was satisfied that unless possession was taken immediately, and the Housing Board permitted to proceed with the construction, the Board will not be able to adhere to the time-bound programme. In addition to the said fact, the Division Bench referred to certain other material also upon which the Government had formed the said satisfaction viz., that in view of the time-bound programme stipulated by the lender, HUDCO, the Board had already appointed a large number of engineers and other subordinate staff for carrying out the said work and that holding an inquiry under Section 5-A would have resulted in uncalled for delay endangering the entire scheme and time-schedule of the Housing Board. If must be remembered that the satisfaction under Section 17(4) is a subjective one and that so long as there is material upon which the Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. This is the principle affirmed by decisions of this Court not under Section 17(4) but also generally with respect to subjective satisfaction." (Emphasis supplied)

13. In Chameli Singh case (supra), a bench of 3 learned Judges again considered the question. The notification under Section 4 was dated 23.07.1983 and the declaration under section 6 was also published on the strength of notification under Section 17(4). Regarding the challenge to the notification under Section 17(4) this Court inter alia held as follows:

> "3..When the Government forms an opinion that it is necessary to require immediate possession of the land for building houses for the Dalits, it forms the opinion of urgency to take immediate possession for the said purpose.
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> Accordingly it is entitled to direct dispensing with the inquiry under Section 5-A and publish the declaration under Section 6 after the date of the publication of Section 4(1) notification.
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> 4. It is settled law that the opinion of urgency formed by the appropriate Government to take immediate possession, is a subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated by mala fides or colourable exercise of power.
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> Article 25(1) of the Universal Declaration of Human Rights declares that "everyone has the right to a standard of living adequate for the health and well-

being of himself and his family including food, clothing, housing, medical care and necessary social services".

15. The question, therefore, is whether invocation of urgency clause under Section 17(4) dispensing with inquiry under Section 5-A is arbitrary or is unwarranted for providing housing construction for the poor.

In Aflatoon v. Lt. Governor of Delhi [(1975) 4 SCC 285] (SCC at p. 290), a Constitution Bench of this Court had upheld the exercise of the power by the State under Section 17(4) dispensing with the inquiry under Section 5-A for the planned development of Delhi. In Pista Devi case [(1986) 4 SCC 251] this Court while considering the legality of the exercise of the power under Section 17(4) exercised by the State Government dispensing with the inquiry under Section 5-A for acquiring housing accommodation for planned development of Meerut, had held that providing housing accommodation is national urgency of which court should take judicial notice. The pre-

notification and post-notification delay caused by the officer concerned does not create a cause to hold that there is no urgency. Housing conditions of Dalits all over the country continue to be miserable even till date and is a fact of which courts are bound to take judicial notice. The ratio of Deepak Pahwa case [(1984) 4 SCC 308 : (1985) 1 SCR 588] was followed. In that case a three-Judge Bench of this Court had upheld the notification issued under Section 17(4), even though lapse of time of 8 years had occurred due to inter- departmental discussions before receiving the notification. That itself was considered to be a ground to invoke urgency clause. It was further held that delay on the part of the lethargic officials to take further action in the matter of acquisition was not sufficient to nullify the urgency which existed at the time of the issuance of the notification and to hold that there was never any urgency. In Jage Ram v. State of Haryana [(1971) 1 SCC 671] this Court upheld the exercise of the power of urgency under Section 17(4) and had held that the lethargy on the part of the officers at an early stage was not relevant to decide whether on the day of the notification there was urgency or not. Conclusion of the Government that there was urgency, though not conclusive, is entitled to create weight. In Deepak Pahwa case [(1984) 4 SCC 308 : (1985) 1 SCR 588] this Court had held that very often persons interested in the land proposed to be acquired may make representations to the authorities concerned against the proposed writ petition that is bound to result in multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often delay makes the problem more and more acute and increases urgency of the necessity for acquisition.

In Rajasthan Housing Board v. Shri Kishan [(1993) 2 SCC 84] (SCC at p. 91), this Court had held that it must be remembered that the satisfaction under Section 17(4) is a subjective one and that so long as there is material upon which Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority.

In State of U.P. v. Keshav Prasad Singh [(1995) 5 SCC 587] (SCC at p. 590), this Court had held that the Government was entitled to exercise the power under Section 17(4) invoking urgency clause and to dispense with inquiry under Section 5- A when the urgency was noticed on the facts available on record. In Narayan Govind Gavate case [(1977) 1 SCC 133 :

> 1977 SCC (Cri) 49 : (1997) 1 SCR 763] a three-Judge Bench of this Court had held that Section 17(4) cannot be read in isolation from Section 4(1) and Section 5-A of the Act.

> Although 30 days from the notification under Section 4(1) are given for filing objections under Section 5-A, inquiry thereunder unduly gets prolonged. It is difficult to see why the summary inquiry could not be completed quite expeditiously. Nonetheless, this Court held the existence of prima facie public purpose such as the one present in those cases before the Court could not be successfully challenged at all by the objectors. It further held that it was open to the authority to take summary inquiry under Section 5-A and to complete inquiry very expeditiously. It was emphasised that: (SCC p. 148, para 38) "... The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 5- A which has to be considered." (Emphasis supplied)
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> 14. This Court proceeded to consider the decisions in Gavate, Pista Devi and Rajasthan Housing Board. As far as Gavate was concerned, this Court pronounced as follows:

16. It would thus be seen that this Court emphasised the holding of an inquiry on the facts peculiar to that case. Very often the officials, due to apathy in implementation of the policy and programmes of the Government, themselves adopt dilatory tactics to create cause for the owner of the land to challenge the validity or legality of the exercise of the power to defeat the urgency existing on the date of taking decision under Section 17(4) to dispense with Section 5-A inquiry.

17. It is true that there was pre-

notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry under Section 5-A. As held by this Court, the delay by itself accelerates the urgency: Larger the delay, greater be the urgency. So long as the unhygienic conditions and deplorable housing needs of Dalits, Tribes and the poor are not solved or fulfilled, the urgency continues to subsist. When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the court, not being an appellate forum, would not disturb the finding unless the court conclusively finds the exercise of the power mala fide. Providing house sites to the Dalits, Tribes and the poor itself is a national problem and a constitutional obligation. So long as the problem is not solved and the need is not fulfilled, the urgency continues to subsist. The State is expending money to relieve the deplorable housing condition in which they live by providing decent housing accommodation with better sanitary conditions. The lethargy on the part of the officers for pre and post-notification delay would not render the exercise of the power to invoke urgency clause invalid on that account.

18. In every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The State exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose.

(Emphasis supplied)

15. In Om Prakash and Anr. vs. U.P and Others (supra) relied upon by the appellants, a Bench of two learned Judges upheld the complaint of the land owners against the dispensing of inquiry under Section 5A of the Act. This Court distinguished Rajasthan Housing Board (supra) noticing the contents of paragraph 14 in the said judgment and found that the said decision was rendered in the peculiar facts of the case before the Court. As far as the decision in Pista Devi (supra) is concerned, the Bench took the view that the decision in Pista Devi could not have laid down any legal proposition contrary to the earlier judgment in Gavate(supra). It is true that the decision in Chameli Singh (supra) rendered also by a Bench of three learned Judges was not noticed.

16. We need to notice the decision of this court rendered by a bench of two learned Judges and reported in Radhy Shyam (supra). Therein this Court after an exhaustive survey of decisions including Gavate, Pista Devi and Rajasthan Housing Boards, Chameli Singh (supra) which appears to be the representatives of two streams of perspectives summed up its conclusions as follows: -

> "Para77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:
>
> (i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good — Dwarkadas Shrinivas v. Sholapur Spg. and Wvg. Co. Ltd. [AIR 1954 SC 119] , Charanjit Lal Chowdhury v. Union of India [AIR 1951 SC 41] and Jilubhai Nanbhai Khachar v. State of Gujarat [1995 Supp (1) SCC 596].
>
> (ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly — DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana [(2003) 5 SCC 622] ; State of Maharashtra v. B.E. Billimoria [(2003) 7 SCC 336] and Dev Sharan v. State of U.P. [(2011) 4 SCC 769 : (2011) 2 SCC (Civ) 483]
>
> (iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-

bound to scrutinise the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, can the State invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word “may” in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4). The court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Sections 5-A(1) and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the court should view the invoking of Sections 17(1) and/or 17(4) with suspicion and carefully scrutinise the relevant record before adjudicating upon the legality of such acquisition.” (Emphasis supplied)

17. In the said case the notification was issued dated 12.03.2008 under Section 4 of the Act. The public purpose projected was the planned industrial development project in the district. The court took the view that even if the planned industrial development project of the district was considered

as public purpose, there was no urgency justifying invoking the power under Section 17 (4) of the Act.

18. In Anand Singh case (supra), a Bench of two learned Judges dealt with an acquisition for a residential colony for the Gorakhpur Development Authority. The notification was issued under Section 4 in 2003 and 2004. By the said notifications power was invoked under Section 17 (4), and the declaration also came to be issued under Section 6 on 28.12.2004. The contention of the Gorakhpur Development Authority was that many steps were taken in developing the land acquired in as much as water, land, electric lines, sewerage line, drainage etc. were laid and roads constructed out of the total outlay of merely Rs. 8 to 9 crores. An amount of excess of Rs. 5 crores were already spent and 60 per cent of the work was completed. The Court referred to Gavate, Pista Devi, Rajasthan Housing Boards, Chameli Singh and Om Prakash (supra) and held as follows: -

> "41. The power of eminent domain, being inherent in the Government, is exercisable in the public interest, general welfare and for public purpose. Acquisition of private property by the State in the public interest or for public purpose is nothing but an enforcement of the right of eminent domain. In India, the Act provides directly for acquisition of particular property for public purpose. Though the right to property is no longer a fundamental right but Article 300-A of the Constitution mandates that no person shall be deprived of his property save by authority of law. That Section 5-A of the Act confers a valuable right to an individual is beyond any doubt. As a matter of fact, this Court has time and again reiterated that Section 5-A confers an important right in favour of a person whose land is sought to be acquired.
>
> 42. When the Government proceeds for compulsory acquisition of a particular property for public purpose, the only right that the owner or the person interested in the property has, is to submit his objections within the prescribed time under Section 5-A of the Act and persuade the State authorities to drop the acquisition of that particular land by setting forth the reasons such as the unsuitability of the land for the stated public purpose; the grave hardship that may be caused to him by such expropriation, availability of alternative land for achieving public purpose, etc. Moreover, the right conferred on the owner or person interested to file objections to the proposed acquisition is not only an important and valuable right but also makes the provision for compulsory acquisition just and in conformity with the fundamental principles of natural justice.
>
> 43. The exceptional and extraordinary power of doing away with an enquiry under Section 5-A in a case where possession of the land is required urgently or in an unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked.

The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5-A. Exceptional the power, the more circumspect the Government must be

in its exercise. The Government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5-A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5-A.

44. A repetition of the statutory phrase in the notification that the State Government is satisfied that the land specified in the notification is urgently needed and the provision contained in Section 5-A shall not apply, though may initially raise a presumption in favour of the Government that prerequisite conditions for exercise of such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which the power has been exercised. Upon challenge being made to the use of power under Section 17, the Government must produce appropriate material before the Court that the opinion for dispensing with the enquiry under Section 5-A has been formed by the Government after due application of mind on the material placed before it.

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." (Emphasis supplied)

19. Thereafter, the court noticed the conflict between Gavate and Pista devi (supra) and held as follows: -

> "47. The special provision has been made in Section 17 to eliminate enquiry under Section 5-A in deserving and cases of real urgency. The Government has to apply its mind on the aspect that urgency is of such nature that necessitates dispensation of enquiry under Section 5-A. We have already noticed a few decisions of this Court. There is a conflict of view in the two decisions of this Court viz. Narayan Govind Gavate [(1977) 1 SCC 133:
>
> 1977 SCC (Cri) 49] and Pista Devi [(1986) 4 SCC 251]. In Om Prakash [(1998) 6 SCC 1] this Court held that the decision in Pista Devi [(1986) 4 SCC 251] must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in Narayan Govind Gavate [(1977) 1 SCC 133: 1977 SCC (Cri) 49] . We agree.
>
> 48. As regards the issue whether pre-

notification and post-notification delay would render the invocation of urgency power void, again the case law is not consistent. The view of this Court has differed on this aspect due to different fact situation prevailing in those cases. In our opinion such delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has been placed by the appropriate Government before the Court justifying that urgency was of such nature that necessitated elimination of enquiry under Section 5-A.

49. In a country as big as ours, a roof over the head is a distant dream for a large number of people. The urban development continues to be haphazard. There is no doubt that planned development and housing are matters of priority in a developing nation. The question is as to whether in all cases of "planned development of the city" or "for the development of residential area", the power of urgency may be invoked by the Government and even where such power is invoked, should the enquiry contemplated under Section 5-A be dispensed with invariably. We do not think so. Whether "planned development of city" or "development of residential area" cannot brook delay of a few months to complete the enquiry under Section 5-A? In our opinion, ordinarily it can. The Government must, therefore, do a balancing act and resort to the special power of urgency under Section 17 in the matters of acquisition of land for the public purpose viz. "planned development of city" or "for development of residential area" in exceptional situation.

51. It must, therefore, be held that the use of the power of urgency and dispensation of enquiry under Section 5-A by the Government in a routine manner for the "planned development of city" or "development of residential area" and thereby depriving the owner or person interested of a very valuable right under Section 5-A may not meet the statutory test nor could be readily sustained." (Emphasis supplied)

20. The court in the said case permitted the appellants to represent to the state's authority under Section 48 of the Act for release of their land.

21. No doubt in State OF Haryana v. Eros City Developers Private Limited and Others8, this Court took the view that public interest must receive primacy when (2016) 12 SCC 265 it conflicts with private interest. The stand of the state and the Second Respondent appears to be that the judgment rendered by two judges' bench which deviated from the judgment in Pista Devi (supra) and Chameli Devi (supra) were not correctly decided. ANALYSIS AND FINDINGS

22. We may cull out the principles at play. What is required of the authority is to form a subjective opinion. This does not mean that the opinion can be whimsical or capricious. There must be materials before the authority. The materials must be relevant. The authority must apply his mind to the material. This is apart from the requirement that action must not be malafide. Undoubtedly the purpose must be a public purpose. But merely because the purpose of the acquisition is found to be a public purpose, the duty of the authority does not end. He must be satisfied that there is real agency such that the invaluable right vouchsafed to a person to ventilate his grievances against the acquisition is not unjustifiably extinguished. Section 5A of the Act guarantees a right to the person interested in the property which was the only statutory safeguard to stave off of a compulsory acquisition of his property. The power under Section 17 (4) is discretionary. Being a discretion it

must be exercised with due care. It is true that if there is relevant material however meagre it may be and the authority has without being guided by extraneous considerations applied his mind and taken a decision, then the court would adopt a hands-off approach. In the ultimate analysis as with any other decision a balancing of conflicting interests is inevitable. The authorities must remain alive and alert to the precious right created in favour of the citizens which is not meant to be a mere empty ritual.

23. It is true again that the decisions in this Court appear to convey conflicting signals. However, there is a certain element of consensus on fundamental principles. The dichotomy essentially has to be resolved by carefully attending to the facts of each case. The decision of a Bench of three Judges in Gavate (supra) enunciates the principles relating to the manner in which a challenge to a notification under Section 17(4) must be approached in the matter of discharging the burden of proof. When a challenge is made to the invocation of power under Section 17 (4) the writ applicant cannot succeed on bare and bald assertions. The facts which are specifically within the exclusive knowledge of the state must be laid before the court on the basis of the principle in Section 106 of the Evidence Act. Existence of the exceptional circumstances justifying invoking of Section 17 (4) must be established in the wake of a challenge. The true concept unravelled by this Court in Gavate (supra) is the total evidence theory. In other words, on an appreciation of the evidence made available by all the parties it is open to the court to conclude that no occasion arose for resorting to the power under Section 17 (4) which indeed must be read as an exception to the general rule that the acquisition of property is made after affording an opportunity the person adversely affected to demonstrate that the acquisition was unjustified.

24. In the meeting held on 3.5.2002 by decision /item/21, there was a proposal to acquire 52 hectares of land for the scheme. In implementation of the said decision, letters were addressed on 6.6.2003 and 18.6.2003 by the second respondent. By letter 24.9.2003 the officer directed the Authority to deposit an amount towards acquisition. On 18.7.2003, second respondent sent a proposal to acquire 52.361 hectares of land and on 31.1.2004 deposited about 10% of approximate value of land. Certain deficiencies were pointed out by letter dated 13.12.2004. The second respondent thereafter deposited the remaining cost. State Government issued notification on 8.10.2004 under section 4 of the Act also invoking Section 17(4). The declaration under section 6 came to be published on 7.10.2005. A perusal of a communication issued dated 29.3.2006 addressed to the In-charge of Land Acquisition by the second respondent would show as follows:

> “In Gata No.880 and --893, Painth (Cattle Market) was being put for the animals, and that is why earl~er these Gatas have been kept separate from the acquisition, but now in these Gatas shops have been constructed and the land of these Gatas are being sold for residential houses, hence as these numbers are contiguous with the Plan, these gatas are also required ta_ be acquired after preparing an amended proposal.”

> 25. Based on the 32nd Board Meeting of the Authority held on 8.9.2005, a Committee was constituted. A proposal was sent to in regard to Survey No. 880 and 893, situated allegedly in the middle of the total area of the scheme. Based on the 33rd Board Meeting held on 29.05.2006 the third respondent Vice Chairman of the

> second respondent wrote to the Collector, Bulandshehar on 6.10.2006. Herein, he refers to the 33rd Board Meeting of the second respondent held on 29.05.2006 and that it was decided to forward a proposal for acquiring the land in question apart from other lands. It is further mentioned by the third respondent about the 13 shops, in the application which is referred to as the letter dated 2.9. 2006 written by the appellants were illegally constructed against which action was taken.

It is further stated as follows:

> "For the animals coming in Painth (Cattle Market) there is no Shed, Khor or Kundia for drinking water etc. are present at he spot. In the revenue records, in the above both Gatas instead of entering Painth (Cattle Market), the names of Shri Hamid Ali Khan and Shri Jahid Ali Khan sons of Mohd. Hussain Ali Khan has been entered and it has also been entered that those land are declared non-cultivated land under Section 143."

> 26. Thereafter on 10.10.2006 the third respondent again wrote to the Deputy Secretary, Housing & Urban Planning. It is essentially a reiteration of letter dated 06.10.2006. It is further pointed out the area of the Mosque and Petrol pump in Survey No.880-and the area of Mazhar in survey No. 893 has been left out in the final proposal. It is lastly pointed out inter alia that in Bulandshehar except Khurja cattle market are being put at very large level in many other Kasbas/Nagars. The cattle market is stated to be in the middle of the total area of 52.361 hectares. It is specifically pointed out that in view of the requirement of clean environment the work of cattle market in between housing area of any residential area will not be proper. There is reference to a further letter 7.1.2007. On 3.1.2008 again the Vice Chairman of the second respondent wrote to the Special Secretary reiterating the earlier communications hereinbefore.

On 8.2.2008, it is pointed out by the Vice Chairman that the land to be acquired will be developed as part of the scheme. Reference is made to a request for notification for acquiring the land. On 8.3.2008 the Special Secretary wrote to the Vice Chairman of the second respondent. He sought information in terms of Government order dated 19th October, 2001 what is the purpose to require only 2.692 hectares land for the residential/commercial scheme. The appellants would point out that this was replied to by communication dated 27.3.2008 by the vice Chairman. Again, it is inter alia stated as follows:

> The said Painth (Cattle Market) in question is situated at the middle of the Planning area and in view of the clean environment, putting of Painth(Cattle Market) for the animals under the housing scheme is not proper from any angle. According to the record available in the authority, on the land in question only on one day Painth (Cattle Market) is being put for the animals. In the Gatas in - question the areas of Mosque and. Mazar are being kept free from acquisition.

27. A perusal of the files made available would reveal that on 14.1.2008, there is reference to the clarification by the Vice chairman as to the justification for acquiring of 2.692 hectares for the development of residential and commercial scheme and from the planning point of view. Thereafter referring to letter 8.2.2008 from the Vice chairman of the second respondent it is found that the land is situated in the middle of land acquired earlier and that the Vice chairman has requested that notification be issued at the earliest. The matter was put up before the Minister for issuance of the notification under section 4(1)/17 for acquiring the land. This is dated 19.2.2008. On 2.3.2008, the Special Secretary found that there was some request seeking exemption of the some land sought to be acquired which was examined by the Government in the enclosed file 2033LA/2006. The proposal for exemption was not allowed. The Principal Secretary (Planning) had referred to the rejection of application for exemption and therefore the matter was put up for notification under section 4(1)/17. On the very same day, the signature of the Minister was obtained. From this we are to infer that the Minister approved the proposal for issue of notification and it was issued thereafter on 11.4.2008.

28. The minutes of meeting of the second respondent authority 29.5.2006 inter alia under item No.31/3 states as follows:

Item No.(31/3): – Regarding the land acquisition plan proposed by the authority: – It was expected by the committee constituted by the board meeting, that keeping in view the financial position and plans of the authority, by showing the “profit – loss” justification, the detailed description should be prepared by the developed authority and should be put up in the next board meeting, so that it can be considered by the members of the board/committee constituted at the time of the board meeting. The site inspection was conducted by the committee on 03.12.2005, 15.12.2005 and 05.04.2006 of the Kalindi Kunj residential scheme, situated in Khurja and transport Nagar commercial scheme and Ganga Nagar residential/commercial schemes, situated in Bulandsahar and the Gata numbers left out from the scheme were inspected. In this regard, it was informed by the vicechairman that a plot left out and that time, under the Kalindi Kunj residential scheme i.e. Gata number 880, area 1.383 ha and Gata number 893, area 1.309 ha with total area of 2.692 ha, the supplementary proposal for the same has been sent to the special land acquisition officer, Bulandsahar. The proposal for issuing the Section – 4/17 notification for land acquisition of the Ganga Nagar residential scheme and transport Nagar scheme Bulandsahar is presently under consideration of the government and efforts are being made to take necessary action regarding its pronouncement by establishing the coordination with the government level. As per the instructions received from government of India, New Delhi, since the “Commonwealth Games” are to be arranged in New Delhi in the year 2010 and for providing residential and commercial facilities and in order to control the population pressure within the NCR region, development of residential and commercial schemes is absolutely necessary, in the broad interest of the public and the authority.

It may be mentioned regarding the unavailability and necessary of both the schemes that in accordance with the instructions of the NCR planning board, demand survey work for these schemes was started from 02.01.06 to 10.02.2006, in which demand was received for 642 plots as against 685 plots and the estimated amount of Rs. 2.67 crore was received as 10% registration charges. From this it is seen that the above schemes of the authority will be very profitable for the authority and their implementation is necessary in the broad public interest. Therefore, changes have been sent in the proposal for land acquisition for both these schemes, land development under the scheme, public interest and broad interest of the authority. The proposal for issue of Section – 4/17 notification for both the schemes is under consideration of the government, in which there appears to be no need for any amendment/stains. Therefore, it is necessary in public interest and broad interest of the authority that action should be taken for the pronouncement of Section – 4/17 notification of these schemes by establishing the coordination at the government level…"

29. A perusal of the file notings would reveal that on 24.3.2009 it was noticed that as per the rules the notification under section 6/17 had to be issued before 11.4.2009 in view of the notification issued under 4(1)/17(4) on 11.4.2008. There is reference to Rs.37,76,711/- having been deposited by the second respondent constituting unnecessary expenditure, if the acquisition lapsed. On the said basis it was stated in view of the unavoidable situation of issuing the section 6/17 notification before 11.4.2009 it was proposed to issue the notification. Thereafter, it was found that in view of the elections being underway and enforcement of the election code, permission of the officer had to be obtained. The approval /signature of the Principal Secretary had to be obtained for issuing the Section 6/17 declaration. It is thereupon that the notification under Section 6 came to be issued on 9.4.2009.

30. On the basis of the declaration, the possession of the land according to the second respondent was taken over on 27.7.2009 and the name of the second respondent was entered in the revenue record.

31. In this connection, the specific stand set up by the appellants in the writ petition as to the location of the market, which is comprised survey nos.880/893, is as follows:

> "That the Vice Chairman again sent false information vide letter dated 27.3.2008 to the Special Secretary, that there are 13 houses over the land in dispute, which was wholly false and against spot position. The true copy of report dated 27 .3.2008 is being filed herewith as Annexure No. 14 to this Writ Petition.

That it is respectfully submitted that the said plot nos. 880 and 893 are not situated in the centre of Scheme as alleged in the reports dated 6.10.2006 and 10.10.2006. They are situated at the one end of· city facing G.T. Road and if a huge boundary wall is erected on these plots by the petitioners the said plots can very well be separated from the residential area without disturbing the expansion plan of the Scheme. It is respectfully submitted that the petitioners are ready to erect a boundary wall on their own expense if they are permitted and assured that no such acquisition would be made as depicted in the letter issued from the office of respondent nos.2/3 dated 10.10.2006. That the layout plan of respondent no. 2 itself show that on plot no. -880 there is a plan i.e. Cattle market and this

fact is also proved from this layout plan that both the plots in question are at the end of scheme which is facing G.T. Road. It is not in any case situated in the centre of the Scheme.

That the layout plan of respondent no. 2 also shows that the end of plots in questions have been intended to be used for commercial purposes in the whole layout plan, entire commercial activities have been projected all along the National Highway. The residential area in the Scheme is behind this commercial area."

32. A short counter affidavit was filed by the second respondent. There is no specific denial of the case set up by the appellants in paragraph 23, 24 and 27. If that be so on the unrebutted allegations an inference could be drawn that the case set up by the respondents that the properties in question were situated in the middle of the scheme area is incorrect.

33. We must notice certain salient features. Perusal of the impugned notification under section 17(4) and even Section 6 declaration shows that the land in question is recited as being required for the public purpose of the Bulandshehar-Khurja Development Authority or for the Kalindi Kunj residential/ commercial (supplementary). It is further recited that as the Governor was convinced about the great necessity of the land and the provision of section 17 (1) of the Act being applicable and in view of the necessity, inquiry under section 5A was not applied on the basis that 'possibility of delay may be abandoned'. It is further stated that land is required for Kalindi Kunj residential/commercial scheme. A perusal of the revised lay out plan inter alia would show that the scheme was a residential cum commercial scheme. It was to consist of park, community facilities such health, post office, social and cultural centre and educational centre. The land which was reserved for the residential area is shown as constituting 38.57% of the area of the scheme. The commercial part of the Scheme was to consist of 4.9% of the total area of the scheme. We make this observation to record our finding that the scheme is not a pure residential scheme. Secondly, the only case which the respondents have further is that under a scheme 5% of the plots are reserved for the landless. Therefore, this fact may stand out in sharp contrast with the scheme which fell for consideration before this Court in Chameli Singh (supra) wherein the power under section 17(4) was invoked for land for building houses for the dalits. Initially, the land in question, was not proposed to be acquired. The total land which was proposed to be acquired was fixed at 52 and odd hectares.

34. A perusal of the communication dated 29.3.2006 from the second respondent Authority reveals that according to it, survey nos. 880 and 893 were being used for keeping a cattle market and therefore the lands were not required. It is further found that in the survey 13 shops were constructed and the land in these survey were sold for residential house. Being contiguous with the scheme area, these lands were projected as required on preparing an amended proposal. However, in the communication dated 06.10.2006 issued by the third respondent he refers to requirement of clean environment and therefore a cattle market of the animals in the housing area may not be proper. The same position is again reiterated as already noted in communication dated 10.10.2000 as well. The appellants had given a representation on 08.12.2006 to the Chief Secretary praying that the property may not be taken for the residential/commercial scheme. Therein, it is inter alia stated that the cattle market is located at one corner of the acquired land of 52.361 hectares. The appellants state about their readiness to construct a separate boundary wall. It is stated to be their only source

of income.

35. It is to be noticed that the declaration under section 6 was issued only on the eve of expiry of one year from 11.4.2008. The urgency indicated in the file is to tide over the bar of issuance of declaration under section 6 beyond one year from 11.4.2008 the date on which notification under 4/17 was issued. There is no indication in the file about the urgency for issuing the declaration immediately after the notification under Section 4. In other words, the file does not reveal any urgency at all associated with the need to acquire the land immediately which constitutes the foundation for invoking the urgency clause.

36. We are at a loss as to what was the material which was relevant to a decision under section 17(4) of the Act. In this regard we may notice the following:

> Notification was issued under section 17(4) in October 2004 regard to 52 and odd hectares of land.
>
> The Section 6 declaration is made only in October 2005. The survey numbers in question in this case according to the respondent is located in the middle. However, it is not acquired on the basis that the said land was being used as cattle market (see communication dated 29.3.2006). The appellants have a definite case that possession itself was taken despite the availability of power to take possession immediately, only on 6.1.2006.
>
> The proposal to take the further land was taken in March, 2006 if not earlier. The reason given for acquiring the land is alleged construction of shops by the appellants and the contiguity of the land covered by the land earlier acquired with the land in question. On the other hand, the third respondent refers further to the need for clean environment which is in contradiction to the communication dated 29.3.2006.

37. What is relevant for the purpose of this case is to find the following:

> (1) Whether there were relevant material before ethe Government to invoke power under section 17(4)?
>
> (2) Lastly, whether the government applied its mind?

38. We have noticed the material which consists of the communications addressed to the second respondent and the communications by the third respondent. Apart from the same, the usual certificates/forms indicating inter alia that there was no place of worship located in the scheme was no doubt available. But the point is only whether there was material for dispensing with the inquiry under Section 5A and even, more importantly, whether the authority applied its mind to it. Even the notification under section 17(4) came to be issued after more than two years of the proposal sent sometime in March, 2006 if not earlier. We have already noted the fact that declaration under section 6 came to be issued only on 9.4.2009, just two days prior to the first anniversary of the date

of notification under section 4. More importantly, we have noticed what finally impelled Government to issue the notification, namely, the apprehension that if it is not issued within one year of the section 4 notification the acquisition would lapse. This had nothing to do with urgency which would have manifested in the section 6 declaration being issued much earlier. This must also be viewed in the background that though the Section 4(1)/(17) Notification was earlier issued in regard to 52.361 hectares on 08.10.2004, the declaration under Section 6 was issued only on 07.10.2005.

39. The statutory authority under section 5A of the Act is expected to give a fair hearing. It can stand between an uncalled for proposal to acquire property. Disputed questions of facts in regard to the property to acquire the property are to be considered by the same Authority. Yet another pertinent aspect is the fact that the subject matter of the second acquisition was 2 and odd hectares. It was apparently just the appellants, who had to be given a hearing.

40. We would therefore think that in the facts of this case, having regard to the nature of the scheme, the delay with which section 6 declaration was issued, possession taken and the nature of the material on the basis of which the proposal was processed, the appellants are justified in contending that the notification under 17(4) dispensing with the inquiry under Section 5A was unjustified.

41. We may notice another aspect. This appeal arises from the order passed by the High Court in the year 2000. While issuing notice, this Court in the SLP stage ordered status quo as on 6.11.2009 be maintained. Thereafter, the leave was granted on 27.1.2012. The interim order was however directed to continue. It is after nearly 12 years that the case is finally being disposed of. In the meantime, the Land Acquisition Act was repealed and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has taken its place. Therefore, there is no question of the matter being considered for an inquiry being held under section 5A. We have also noted that there is no denial of the allegation in the writ petition about the lie of the property, viz., it not being in the middle of the scheme area.

42. The appeal is allowed. The impugned judgment is set aside and the writ petition filed by the appellants shall stand allowed and the impugned notifications and proceedings based on the same shall stand quashed. The property shall be returned back to the appellants. This will be without prejudice to the rights/powers available to the respondents under law.

……J. [K.M. JOSEPH] ……J. [S. RAVINDRA BHAT] NEW DELHI NOVEMBER 23, 2021