

Essco Fabs Pvt. Ltd. & Anr vs State Of Haryana & Anr on 7 November, 2008

Equivalent citations: AIR 2009 SUPREME COURT 1552, 2009 AIR SCW 1074, (2009) 1 CLR 154 (SC), 2009 (2) SCC 377, 2008 (14) SCALE 495, (2009) 3 MAD LJ 1150, (2008) 14 SCALE 495, (2009) 1 ALL WC 594

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Bench: D.K. Jain, C.K. Thakker

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6580 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (CIVIL) NO. 15449 OF 2004

ESSCO FABS PVT. LTD. & ANR. ... APPELLANTS

VERSUS

STATE OF HARYANA & ANR. ... RESPONDENTS

WITH
CIVIL APPEAL NO.6581 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (CIVIL) NO. 15544 OF 2004

THE PANIPAT TEACHERS
(RECOGNISED SCHOOLS)HOUSING
CO-OPERATIVE SOCIETY LTD. & ANR. ... APPELLANTS

VERSUS

STATE OF HARYANA & ORS. ... RESPONDENTS

WITH
CONTEMPT PETITION NO. 30 OF 2007
IN
CIVIL APPEAL NO.6580 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (CIVIL) NO. 15449 OF 2004

ESSCO FABS PVT. LTD. & ANR. ... PETITIONERS

VERSUS

STATE OF HARYANA & ANR. . . . RESPONDENTS
J U D G M E N T

C.K. THAKKER, J.

1. Leave granted.

2. Both these appeals are filed by the appellants being aggrieved and dissatisfied with the judgment and order dated April 02, 2004, passed by the High Court of Punjab & Haryana in Civil Writ Petition Nos. 1853 of 2003 and 2077 of 2002.

3. To appreciate the controversy raised in the present appeals, relevant facts in nutshell may be noted.

4. According to the appellant Essco Fabs Pvt. Ltd. ('Essco' for short), the Government of Haryana intended to acquire land for public purpose, viz., for utilization of land as residential, commercial and industrial area in Sector Nos. 11, 12 and 25 Part-II by Haryana Urban Development Authority ('HUDA' for short). For the said purpose, the Government issued a notification under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') on December 15, 1982. The land mentioned in the said notification situated in village Kheri Nangal was sought to be acquired. A final notification under Section 6 of the Act was issued on June 20, 1984. However, the land acquisition proceedings could not be completed within the stipulated period and the notifications lapsed and the land stood released.

5. It was the case of Essco that it bought the land which was sought to be acquired earlier for expansion of its Export Unit. According the appellant, it is engaged in manufacturing and exporting rugs, cushions, bed-spreads, bath mats, fabrics, kitchen towel, aprons, pot holders, gloves, mitten, curtains, napkins, carpets, etc. It is Export Oriented Unit and earns foreign exchange by export of goods manufactured in its unit. In the year 1992, it exported materials over Rs.2 crores. The appellant has stated that on June 6, 1991, it made an application to the Director, Town & Country Planning, Haryana for permission for change of user of land. All necessary documents were appended to the application. The Director, however, vide an order dated September 5, 1991, rejected the permission on several grounds. One of the grounds weighed with the Director for refusing the permission was that the land in question was proposed to be acquired. The appellant has produced a copy of the application as also an order of rejection thereof in the present proceedings. But even thereafter no proceedings for acquisition of land were initiated for many years.

6. On August 1, 2001 i.e. after about twenty years of the first notification of 1982 and nine years after rejection of prayer of the appellant for change of user, the Government of Haryana again issued notification under sub- section (1) of Section 4 of the Act for acquisition of land for the development and utilization for construction of road connecting Sanauli Road with G.T. Road for Sector 25 Part-II B, Urban Estate Panipat by HUDA. The land of the appellant situated in village Kheri Nangal was sought to be included in the notification. Moreover, 'urgency clause' under Section 17 of the Act was applied and a valuable right of raising objections under Section 5-A of the Act was taken away in an arbitrary manner. On the very next day i.e. on August 2, 2001, final notification under Section 6 of

the Act was issued by the Government.

7. It is the case of the appellant that the preliminary notification under sub-section (1) of Section 4 of the Act was required to be published in the manner laid down in the Act. But it had not been published before issuance of final notification under Section 6 of the Act. The final notification was, therefore, illegal and the appellant could not be deprived of his property in a manner not known to law. The right of the appellant to own, possess and enjoy the property is not merely a Common Law right but also constitutional right under Article 300A of the Constitution which has a 'flavour of fundamental right'. The acquisition proceedings, being not in consonance with law were vitiated and liable to be quashed.

8. The appellant, hence, filed Civil Writ Petition No. 1853 of 2003 in the High Court of Punjab & Haryana by invoking Article 226 of the Constitution praying therein for quashing and setting aside acquisition proceedings. The High Court entertained the petition and granted status quo with regard to possession of the land in question. Finally, however, by the impugned judgment it dismissed the petition. The said order is challenged by the appellant in this Court.

9. The other appeal is filed by the Panipat Teachers (Recognized Schools) Housing Co-operative Society Ltd. ('society' for short) challenging the acquisition proceedings. It was the case of the society that pursuant to the representation made by the society, the State Government released 53 kanals and 8 marlas of land by executing an agreement dated October 19, 1985 and by granting land in favour of the society on conditions mentioned in the agreement. Possession of land was handed over to the society. The land was demarcated and was carved out into plots reserving requisite space for school, parks, temple, overhead water tank, roads, green belt etc. The society got the site plan designed strictly in accordance with HUDA Rules. The society invested huge amount, approximately Rs.26 lakhs, for developing the land laying down sewer pipe lines, RCC Water pipe lines, construction of roads and boundary walls etc. The site plan, however, has not been cleared by the office of the Director, Town & Country Planning, Haryana despite numerous attempts by the appellant-society. It is alleged by the society that the matter was kept pending for oblique and ulterior purposes on lame and untenable excuses. It is also stated by the society that HUDA published public notice in 'Daily Bhaskar' dated November 10, 2000 demanding development charges thereby acknowledging that the society's land has been rightly developed for teachers' colony. The public notice informed and instructed those land/plot owners who were in arrears to pay all the balance development charges and outstanding dues. No dues were shown as against the appellant-society. Thus, there is nothing due and payable to HUDA by the appellant.

10. Ignoring all these material facts and with a view to cause serious prejudice to the appellant-society, a notification under sub-section (1) of Section 4 of the Act had been issued by the State for acquisition of land.

11. We have already stated facts relating to the issuance of preliminary notification, application of urgency clause under Section 17 and issuance of final notification under Section 6 of the Act while narrating the facts in the first case of Essco. It is, therefore, not necessary to repeat all those facts in the second matter.

12. The appellant-society, in the circumstances, approached the High Court by filing Civil Writ Petition No. 2077 of 2002 which was also decided along with the petition of Essco and the petition of the appellant- society also came to be dismissed.

13. Third writ petition (Civil Writ Petition No. 3324 of 2003) was filed by M/s Lord Shiva Exports, Panipat which also met with the same fate. Lord Shiv Exports, however, has not approached this Court.

14. Notices were issued by this Court and interim relief was granted. Respondents thereafter appeared, affidavits and further affidavits were filed and the matters were ordered to be posted for final hearing. That is how the matters are before us.

15. We have heard learned counsel for the parties.

16. The learned counsel for the appellants Essco and Teachers' society have challenged the acquisition on several grounds. It was contended that the land was not needed for public purpose as set out in the notification of 2001 and, hence, the acquisition is not legal or lawful. Moreover, initially an action was taken for acquisition of land before more than a quarter century in the year 1982. Final notification was also issued after more than one and half year of preliminary notification, but even thereafter, nothing was done by the State and the proceedings lapsed. Again, in 1991, when Essco applied for change of user of land, the prayer was turned down, inter alia, on the ground that the land in question was proposed to be acquired for public purpose. Nothing was done by the State for about a decade. Only in August, 2001, notification under Section 4 was issued. It was strongly urged by the learned counsel for the appellants that preliminary notification was issued on August 1, 2001 and urgency clause was applied though there was no urgency at all. The notification was published in the official gazette thereafter and in two daily newspapers on August 10 and 12, 2001. Final notification under Section 6, however, was issued immediately on the next day i.e. on August 2, 2001, of the issuance of preliminary notification under sub-section (1) of Section

4. It was contended that on the facts of the case, no urgency clause could have been invoked. Even otherwise, the action was bad and de hors the Act since the conditions laid down in sub-section (4) of Section 17 of the Act have not been complied with inasmuch as there was neither grave urgency nor unforeseen emergency. It was submitted that there was lethargy on the part of officers of the Government in not taking steps for more than twenty years. The State cannot take undue advantage of its negligence or inaction and deprive the owners of their right to property in purported exercise of power of eminent domain. The Act is an expropriatory legislation which deprives a person of his property without his consent. The provisions of the Act, hence, have to be construed strictly. It was submitted that Section 5A confers a valuable right on the owners of land of submitting objections against proposed acquisition and such right cannot be taken away or curtailed by the State. On the facts of the case, invocation of urgency clause was not only uncalled for being contrary to law but otherwise arbitrary and unreasonable and on that ground also, the proceedings are liable to be quashed. It was urged that the expression 'the date of publication' has been defined in sub-section (1) of Section 4 of the Act. While construing the said connotation under Section 17, same meaning as

contemplated under Section 4(1) has to be given. Since the final notification under Section 6 had not been published as required by the Act after 'the last date of publication' of notification under Section 4(1), the action is unlawful and is liable to be set aside. It was asserted that no notice as required by Section 9 of the Act had been issued nor payment of 80 percent of the compensation as required by sub-section (3A) of Section 17 had been paid. There was also total non-application of mind on the part of the State Government in not considering the Government policy of granting exemption to functional units dealing with handloom and other industries. On that count also, the proceedings are liable to be dropped.

17. On behalf of Teachers' Society, the learned counsel adopted all the contentions raised on behalf of Essco. The learned counsel, however, further submitted that the society prayed for allotment of land and the prayer was granted. An agreement was entered into between the Authority and the society, possession of land was handed over to the society, which has spent substantial amount of several lakhs for development. Necessary permission was sought so that construction can be made which was also granted by the Authorities, requisite charges which were to be paid had already been paid and no dues had been shown so far as the appellant- society is concerned and yet the impugned action has been taken mala fide and with ulterior motive though the land is not required for public purpose. It was also submitted that even according to the authorities, the land of the appellant-society does not come in 'road line'. It is situate at about 24 meters away (23.94 meters) from road line. It was, therefore, submitted that the proceedings should be declared against the provisions of law and may be quashed.

18. Learned counsel for the respondents, on the other hand, submitted that the action of the authorities is legal, lawful and in consonance with law. It was urged that the land was required for public purpose, viz., for construction of road. For acquisition of land, therefore, a notification was issued. It was submitted that there is no element of mala fide or colourable exercise of power which is clear from the fact that even in early eighties, the land was sought to be acquired. Since the proceedings could not be completed within the stipulated period, they lapsed. That, however, does not mean that the land was not needed for public purpose or that the public purpose disappeared or vanished. The counsel submitted that it was further clear when the prayer of Essco for change of user of land in 1991 was rejected. The applicant was told at that time also that the land was required for public purpose. According to the counsel, Government machinery took some time but it cannot be concluded that the land was not required by the State and only with a view to deprive the appellants of their ownership rights acquisition proceedings had been initiated.

19. Regarding notification of August 1, 2001 and August 2, 2001 under Sections 4 and 6 of the Act respectively, it was submitted that both the notifications were in consonance with law. A preliminary notification under sub- section (1) of Section 4 of the Act was issued showing the intention of the State for acquisition of land for public purpose. Since the acquisition was for construction of road, it was covered by Section 17 of the Act and urgency clause was rightly invoked and in exercise of power under sub-section (4) of Section 17, inquiry contemplated by Section 5A of the Act had been dispensed with. The action was in consonance with law and no grievance can be made contending that the inquiry as contemplated by Section 5A and hearing of objections were illegally dispensed with by the authorities. All actions were consistent with the provisions of the Act and the appellants

have no right to make complaint against those actions. It was, therefore, submitted that the High Court was wholly right in dismissing the writ petitions and the appeals have no substance.

20. Before we deal with the matter on merits, it would be appropriate if we notice the relevant provisions of the Act. As the Preamble shows, the Act has been enacted with a view "to amend the law for the acquisition of land for public purposes (and for Companies)". Section 3 is a 'definition clause' of various expressions used in the Act. Clause (f) defines 'public purpose' and the definition is 'inclusive' in nature. Purposes mentioned in Clauses (i) to (viii) are in the nature of 'public purpose' and the land can be acquired for any such purpose. Part II (Sections 4 to

17) deals with 'Acquisition'. Section 4 enables the appropriate Government to issue preliminary notification for acquisition of land needed or likely to be needed for public purposes. The said section is relevant and reads thus;

Section 4 - Publication of preliminary notification and powers of officers thereupon-- (1) Whenever it appears to the appropriate Government that 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 1[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 1[the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification.

(2) Thereupon it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf, and for his servants and workmen,--

to enter upon and survey and take levels of any land in such locality; to dig or bore in the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches, and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

21. Section 5A is a salutary provision and enables any person interested in the land which is notified under sub-section (1) of Section 4 as being needed or likely to be needed for a public purpose to

lodge objections against the proposed acquisition. It is equally important provision and may be reproduced' Section 5A - Objections : Hearing of objections--(1) Any person interested in any land which has been notified under section 4, Sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be. (2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the Appropriate Government on the objections shall be final. (3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

22. Then comes Section 6 which authorizes the appropriate Government to issue final notification as to declaration that the land is required for public purpose. The said section is also material and reads as under;

6. Declaration that land is required for a public purpose.--(1) Subject to the provisions of Part VII of this Act, when the Appropriate Government is satisfied after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5-A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),--

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1.-In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.-Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration the Appropriate Government may acquire the land in manner hereinafter appearing.

23. Section 9 requires issuance of notice to persons interested. Section 11 requires enquiry to be made and award to be passed by Collector. Section 16 authorises the Collector to take possession of the land acquired under the Act. Thereupon, the land vests absolutely in the Government free from all encumbrances.

24. Section 17 is an exception to the normal rule of acquisition of land and deals with cases of urgency and emergency. The provision is of extreme importance and may be quoted in extenso.

17. Special powers in cases 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 waste or arable land needed for a public purpose]. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity,] the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in

the Government free from all encumbrances.

Provided that the Collector shall not take possession of any building or part of a building under this sub- section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(3A) Before taking possession of any land under sub-section (1) or sub- section (2), the Collector shall, without prejudice to the provisions of sub-section (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2), and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3-B) The amount paid or deposited under sub-section (3A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

(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 not 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).

25. Whereas Part III relates to 'Reference to Court and procedure thereon', Parts IV and V deal with 'Apportionment of compensation' and 'Payment', respectively.

26. It is vehemently contended on behalf of the appellants that on the facts and in the circumstances of the case, the respondents could not have invoked 'urgency clause' by scuttling enquiry and dispensing with hearing of objections under Section 5A of the Act. It was submitted that no action could have been taken in view of the circumstances mentioned earlier. As early as in 1982

proceedings were initiated for acquisition of land but they were allowed to be lapsed in spite of final notification under Section 6 of the Act by not taking appropriate actions in time. Again, in 1991, when Essco Fabs applied for change of user of land, request was turned down on the ground that the land was likely to be needed for public purpose. It was, therefore, submitted that when preliminary notification under Section 4 was issued in 2001, there was no urgent need or compelling necessity nor it was a matter of urgency or emergency under Section 17 of the Act which could justify the action and the proceedings are liable to be quashed.

27. We find considerable force in the above argument of the learned counsel for the appellants. The scheme of the Act is clear which provides for issuance of preliminary notification under sub-section (1) of Section 4 of the Act empowering the appropriate Government to issue such notification for acquisition of land needed or likely to be needed for any public purpose. Since the property belongs to a private individual, unless there is a 'public purpose' as defined in clause (f) of Section 3 of the Act, no acquisition of land can be made. It is in exercise of power of eminent domain that a sovereign may acquire property which does not belong to him. In the circumstances, as a general rule, before exercise of power of eminent domain, law must provide an opportunity of hearing against the proposed acquisition. Even without a specific provision to that effect, general law requires raising of objections by and affording opportunity of hearing to the owner of the property. The Land Acquisition (Amendment) Act, 1923 (Act 38 of 1923), however, expressly made such provision by inserting Section 5A in the Act. It is, therefore, clear that after issuance of preliminary notification under Section 4 before and final notification under Section 6 of the Act, the appropriate Government is enjoined to hear persons interested in the property before he is deprived of his ownership rights. But then there may be cases of 'urgency' or 'unforeseen emergency' which may brooke no delay for acquisition of such property in larger public interest. The Legislature, therefore, thought it appropriate to deal with such cases of exceptional nature and in its wisdom enacted Section 17.

28. 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 5A cannot ipso facto be dispensed with which is clear from sub-section (4) of Section 17 of the Act.

29. Sub-section (4) of Section 17 is an enabling provision and it declares that if in the opinion of the appropriate Government, the provisions of sub-section (1) or (2) are applicable, it may direct that the provisions of Section 5A would not apply. It is, therefore, clear that the Legislature has contemplated that there may be 'urgencies' or 'unforeseen emergencies' and in such cases, private properties may be acquired. But, it was also of the view that normally even in such cases, i.e. cases of urgencies or unforeseen emergencies, the owner of property should not be deprived of his right to property and possession thereof without following proper procedure of law as contemplated by Section 5A of the Act unless the urgency or emergency is of such a nature that the Government is convinced that holding of enquiry or hearing of objections may be detrimental to public interest.

30. In this connection, both the parties invited our attention to several decisions. We will deal with some of the important decisions.

31. In *Nandeshwar Prasad & Anr. V. State of Uttar Pradesh & Ors*, (1964) 3 SCR 425, the land was acquired by the Government for public purpose, viz. the Kanupur Development Board under the Kanpur Urban Area Development Act, 1945. The Court considered the scheme of the Act that after issuance of preliminary notification under Section 4 of the Act, objections are to be heard under Section 5A of the persons interested in the property and thereafter final notification under Section 6 can be issued. The Court, however, noted that to that procedure, there is an exception under Section 17 which enables the Government to apply urgency clause. Where an action is taken under sub-section (4) of Section 17 of the Act, it is not necessary to follow procedure laid down in Section 5A and notification under Section 6 can be issued without report from the Collector as envisaged by Section 5A.

32. The Court stated;

"It will be seen that s. 17(1) gives power to the Government to direct the Collector, though no award has been made under s. 11, to take possession of any waste or arable land needed for public purpose and such land thereupon vests absolutely in the Government free from all encumbrances. If action is taken under s. 17(1), taking possession and vesting which are provided in s. 16 after the award under s. 11 are accelerated and can take place fifteen days after the publication of the notice under s.9. Then comes s. 17(4) which provides that in case of any land to which the provisions of sub-s. (1) are applicable, the Government may direct that the provisions of s. 5-A shall not apply and if it does so direct, a declaration may be made under s. 6 in respect of the land at any time after the publication of the notification under s. 4(1). It will be seen that it is not necessary even where the Government makes a direction under s. 17(1) that it should also make a direction under s. 17(4). If the Government makes a direction only under s. 17(1) the procedure under s. 5-A would still have to be followed before a notification under s. 6 is issued, though after that procedure has been followed and a notification under s. 6 is issued the Collector gets the power to take possession of the land after the notice under s. 9 without waiting for the award and on such taking possession the land shall vest absolutely in Government free from all encumbrances. It is only when the Government also makes a declaration under s. 17(4) that it becomes unnecessary to take action under s. 5-A and make a report thereunder. It may be that generally where an order is made under s.17(1), an order under s. 17(4) is also passed; but in law it is not necessary that this should be so. It will also be seen that under the Land Acquisition Act an order under s. 17 (1) or s. 17(4) can only be passed with respect to waste or arable land and it cannot be passed with respect to land which is not waste or arable and on which buildings stand".

(emphasis supplied)

33. From the above observations, it is clear that even in cases falling under or covered by sub-sections (1) and (2) of Section 17 of the Act and the Government intends to acquire land in cases of 'urgency' or 'unforeseen emergency', it is still required to follow procedure under Section 5A of the Act before issuance of final notification under Section 6 of the Act. It is only when the Government also makes a declaration under sub- section (4) of Section 17 that it becomes unnecessary to take recourse to procedure under Section 5A of the Act.

34. Nandeshwar Prasad was decided by a three Judge Bench.

35. Recently, in Union of India & Ors. v. Mukesh Hans, (2004) 8 SCC 14, a similar question came up for consideration before a three Judge Bench. There land was sought to be acquired at Mehrauli by the appropriate Government for organizing Anjuman-Saire-e-Gul- Faroshan. Proceedings were initiated under the Act and urgency clause was applied. The notification mentioned the public purpose as 'Planned Development of Delhi'. It was also stated that Lt. Governor was of the opinion that Section 17(1) of the Act was applicable to the acquisition and he directed to dispense with inquiry under Section 5A of the Act. Simultaneously, a declaration under Section 6 was issued. Interested parties approached the High Court of Delhi, inter alia, on the ground that decision to dispense with inquiry contemplated by Section 5A of the Act was vitiated by non-application of mind. The High Court upheld the contention and quashed the proceeding. The aggrieved Union approached this Court.

36. It was contended on behalf of the Union that in case of urgency, it was open to the appropriate Government to dispense with inquiry under Section 5A by invoking sub- section (4) of Section 17 of the Act. It was also contended that the urgency contemplated by sub-sections (1) or (2) of Section 17 of the Act was 'by itself' sufficient to invoke sub- section (4) of Section 17.

37. Negating the contention and referring to Nandeshwar Prasad and other judgments, the Court held;

"A careful perusal of the above Section shows that Sub-section (1) of Section 17 contemplates taking possession of the land in the case of an urgency without making an award but after the publication of Section 9(1) notice and after the expiration of 15 days of publication of Section 9(1) notice. Therefore it is seen that if the appropriate Government decides that there is an urgency to invoke Section 17(1) in the normal course Section 4(1) notice will have to be published, Section 6 declaration will have to be made and after completing the procedure contemplated under Sections 7 and 8, 9 (1) notice will have to be given and on expiration of 15 days from the date of such notice the authorities can take possession of the land even before passing of an award.

Sub-section (2) of Section 17 contemplates a different type of urgency inasmuch as it should be an unforeseen emergency. Under this Section if the appropriate Government is satisfied that there is such unforeseen emergency the authorities can take possession of the land even without waiting for 15 days period contemplated under Section 9(1). Therefore, in cases, where Government is satisfied

that mere is an unforeseen emergency it will have to in the normal course, issue a Section 4(1) notification, hold 5A inquiry, make Section 6 declaration, and issue Section 9(1) notice and possession can be taken immediately thereafter without waiting for the period of 15 days prescribed under Section 9(1) of the Act.

Section 17(4) as noticed above provides that in cases where the appropriate Government has come to the conclusion that there exists an urgency or unforeseen emergency as required under Sub-sections (1) or (2) of Section 17 it may direct that the provisions of Section 5A shall not apply and if such direction is given then 5A inquiry can be dispensed with and a declaration may be made under Section 6 on publication of 4(1) notification possession can be made".

38. The Court, therefore, proceeded to state;

"A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4) that by itself is not sufficient to direct the dispensation of 5A inquiry. It requires an opinion to be formed by the concerned government that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with 5A inquiry which indicates that the Legislature intended that the appropriate government to apply its mind before dispensing with 5A inquiry. It also indicates the mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by themselves be sufficient for dispensing with 5A inquiry. If that was not the intention of the Legislature then the latter part of Sub-section (4) of Section 17 would not have been necessary and the Legislature in Section 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically 5A inquiry will be dispensed with. But then that is not language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with 5A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with 5A inquiry does not mean that in every case when there is an urgency contemplated under Section 17(1) and unforeseen emergency contemplated under Section 17(2) exists that by itself would not contain the need for dispensing with 5A inquiry. It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the 5A inquiry is inherent in the two types of urgencies contemplated under Section 17 (1) and (2) of the Act".

39. The learned counsel for the respondent authorities, however, strongly relied upon a two Judge Bench decision of this Court in *Jai Narain & Ors. v. Union of India & Ors.*, (1996) 1 SCC 9. In *Jai*

Narain, the Court held that the question of 'urgency' or 'unforeseen emergency' is the matter which is entirely based on 'subjective satisfaction of the Government' and the Courts do not interfere unless the reasons given are wholly irrelevant and there is non-application of mind. If the public purpose, on the face of it shows that the land is needed urgently, that by itself is relevant circumstance for justifying the action under Section 17(4) of the Act.

40. Again, a similar view was taken by a two Judge Bench in *Chameli Singh & Ors., v. State of U.P. & Anr.*, (1996) 2 SCC 549. In *Chameli Singh*, land was acquired for public purpose, namely, construction of houses for dalits. Urgency clause under Section 17 was applied which was challenged by the land-owners. Holding that the urgency clause was rightly applied and inquiry under Section 5A of the Act has been correctly dispensed with, the Court observed that acquisition of land for providing houses to dalits, tribes and poor would be sufficient to invoke Section 17 of the Act and the land-owners cannot challenge the validity of such acquisition on the ground that inquiry under Section 5A cannot be dispensed with.

41. The Court stated;

"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.

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 5A. 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 male 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".

42. In *First Land Acquisition Collector & Ors., v. Nirodhi Prakash Gangoli & Anr.*, (2002) 4 SCC 160, a two Judge Bench again observed that case of existence of urgency under Section 17 of the Act is a matter of subjective satisfaction of appropriate Government and a decision of Government to dispense with inquiry under Section 5A by invoking urgency provision can be challenged only on the ground of non- application of mind or mala fide exercise of power by the Government. Burden is always on the person alleging mala fide to prove it on the basis of specific materials. So long as the purpose of acquisition continues to exist, exercise of power under Section 17 cannot be held to be mala fide. Mere delay of the Government subsequent to its decision to dispense with inquiry under Section 5A by exercising power under Section 17 would not invalidate the decision.

43. On the basis of above decisions, it was submitted that once a decision has been taken by the State Government to apply urgency clause, the decision of the Government cannot be interfered with by a Court exercising writ jurisdiction.

44. In our judgment, from the above case law, it is clear that normal rule for acquisition of land under the Act is issuance of notification under sub-section (1) of Section 4, hearing of objections under Section 5A and issuance of final notification under Section 6 of the Act. Award will be made by the Collector, notice has to be issued to the land- owners or the person interested and thereafter possession can be taken. Section 17, no doubt, deals with special situations and exceptional circumstances covering cases of 'urgency' and 'unforeseen emergency'. In case of 'urgency' falling under sub-section (1) of Section 17 or of 'unforeseen emergency' covered by sub-section (2) of Section 17, special powers may be exercised by appropriate Government but as held by a three Judge Bench decisions before more than four decades in *Nandeshwar Prasad* and reiterated by a three Judge Bench decision in *Mukesh Hans*, even in such cases, inquiry and hearing of objections under Section 5A cannot ipso facto be dispensed with unless a notification under sub-section (4) of Section 17 of the Act is issued. The legislative scheme is amply clear which merely enables the appropriate Government to issue such notification under sub- section (4) of Section 17 of the Act dispensing with inquiry under Section 5A if the Government intends to exercise the said power. The use of the expression 'may' in sub-section (4) of Section 17 leaves no room of doubt that it is discretionary power of the Government to direct that the provisions of Section 5A would not apply to such cases covered by sub-section (1) or (2) of Section 17 of the Act.

45. In our opinion, therefore, the contention of learned counsel for the respondent authorities is not well founded and cannot be upheld that once a case is covered by sub-section (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 5A 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.

46. It is true that in *Chameli Singh and Jai Narain*, a two Judge Bench has observed that acquisition of land for housing accommodation or for construction of residential quarters for dalits and tribals can be said to be of an urgent nature falling under Section 17(1) of the Act. But as already held in *Nandeshwar Prasad* and *Mukesh Hans*, even in such cases, procedure required to be followed under Section 5A cannot be dispensed with unless notification under sub-section (4) of Section 17 is

issued. In Mukesh Hans, the Court also held that the provision cannot be pressed in service by officers who were negligent and due to their lethargy, proceedings could not be initiated for a quite long time.

47. In the instant case, the facts are eloquent. Initial action of acquisition of land was taken as early as in 1982 but the proceedings lapsed. In 1991, when Essco made an application praying for change of user of land, it was rejected on the ground that the land was likely to be required for public purpose. Nothing, however, was done for about a decade. It is only in 2001 that again Notification under Section 4 was issued and urgency clause was applied. We are, therefore, satisfied that the ratio laid down in Mukesh Hans squarely applies to the facts of the case. No urgency clause could have been invoked by the respondents and inquiry and hearing of objections provided by Section 5A of the Act could not have been dispensed with. The actions of issuance of urgency clause under sub-section (4) of Section 17, dispensing with inquiry under Section 5A and issuance of final notification under sub-section (1) of Section 6 are required to be quashed and they are accordingly quashed.

48. The learned counsel for the appellant also contended that even if it is held that the respondent could have issued final notification without holding inquiry and hearing of objections under Section 5A of the Act, the notification under Section 6 of the Act is illegal and unlawful in view of the fact that the said notification has not been issued after the last of the dates of the publication and giving of public notice referred to as "the date of publication of the notification" under sub-section (1) of Section 4 of the Act.

49. It was submitted that even the said point is concluded by a decision of this Court in State of Uttar Pradesh & Ors. v. Radhey Shyam Nigam & Ors, (1989) 1 SCC 591.

50. The learned counsel for the respondents, on the other hand, relying on State of Haryana & Anr. v. Raghubir Dayal, (1995) 1 SCC 133 and Mohan Singh & Ors. v. International Airport Authority of India & Ors., (1997) 9 SCC 132 submitted that if urgency clause under Section 17(4) is applied by the appropriate Government, final notification under Section 6 of the Act can be issued on the next day of the issuance of preliminary notification under Section 4 of the Act. In the case on hand, the said procedure is followed. Notification under Section 4 was issued on August 1, 2001. Urgency clause was applied and the case was covered by Section 17 (4) of the Act. On the very next day i.e. on August 2, 2001, final notification under Section 6 was issued. Therefore, the procedure required by law has been strictly followed as held by this Court in Raghubir Dayal and Mohan Singh.

51. We would have entered into the said question had it been absolutely necessary for us to decide it in the case on hand. But as observed hereinabove, we are of the view that the appellants are entitled to succeed on the first ground that on the facts and in the circumstances of the case, the appropriate Government was not justified in invoking urgency clause under sub-section (4) of Section 17 of the Act by dispensing with inquiry and hearing of objections under Section 5A of the Act and the final notification issued under Section 6 of the Act deserves to be set aside on that ground alone, we express no opinion one way or the other on the interpretation of the expression "the date of publication of the notification" used in sub-section (1) of Section 4, sub-section (4) of Section 17 and

Section 6 of the Act.

52. For the foregoing reasons, both the appeals are allowed. The action of the respondent authority of dispensing with the inquiry and hearing of objections under Section 5A and issuance of final notification under Section 6 of the Act is hereby quashed and set aside. It is, however, open to the authorities to take appropriate action after following normal procedure laid down in the Act.

53. Appeals are accordingly allowed with costs.

CONTEMPT PETITION NO.30 OF 2007 IN C.A.NO. OF 2008 @ S.L.P. (C)NO. 15449 OF 2004

54. In the light of judgment in the above appeals, the contempt petition stands disposed of.

.....J. (C.K. THAKKER) NEW DELHI,
.....J. NOVEMBER 07, 2008. (D.K. JAIN)