Supreme Court of India
Om Prakash & Anr vs State Of U.P. & Ors on 15 July, 1998
Author: S.B. Majmudar
Bench: S.B. Majmudar, A.P. Misra

PETITIONER:
OM PRAKASH & ANR.

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT: 15/07/1998

BENCH:
S.B. MAJMUDAR, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NOS. 3264- 3268, 3262-3263 OF 1998 (Arising out of SLP (C) Nos. 21680-82, 21689, 21699 of 1995, 164 & 1874 of 1996) AND [I.A. No. ---------- in S.L.P. (C) No. 164 of 1996 (for substitution)] J U D G M E N T S.B. MAJMUDAR, J:

Leave granted in all these special leave petitions. I.A. filed in Civil Appeal arising out of S.L.P. (C) No. 164 of 1996 for bringing on record legal representatives of respondent no. 37 Mahipal is granted.

The title of the Civil Appeal concerned Shall be corrected accordingly.

By consent learned senior advocates appearing for the contesting parties, the appeals were finally heard and are being disposed of by this judgment. These appeals arise out of a common judgment rendered by a Division Bench of the High Court of Judicature at Allahabad on 24th August 1995. The High Court dismissed the writ petitions filed by the appellants who were petitioners before the High Court appellants who were petitioners before the High Court who challenged the notification issued by the State of Uttar Pradesh on 5th January 1991 under Section 4 (1) of Land Acquisition Act, 1894 [hereinafter referred to as 'the Act'] and also the notification under Section 6 of the Act whereby the writ petitioners' lands situated at village Chhalera banger then situated in District Ghaziabad in the State of Utter Pradesh were sought to be acquired. The impugned acquisition was

for the planned industrial development of District Ghaziabad through New Okhla Industrial Development Authority ('NOIDA' in short), Ghaziabad. As the writ petitions raised a common challenge on diverse grounds, they were all heard together and were disposed of by the impugned common judgment of the High Court. The High Court after considering the submissions raised by the learned counsel for the writ petitioners for challenging the acquisition proceedings, came to the conclusion that the land acquisition proceedings were not vitiated in law and consequently the writ petitions were dismissed. That is how the original writ petitioners are before us in these proceedings. They are now confined to the appellants in these 8 Civil Appeals arising from Special Leave Petitions filed by the original writ petitioners concerned.

Before we deal with the main contentions canvassed by learned senior counsel, Shri Shanti Bhushan, appearing for appellants in some of the appeals, and Shri Uma Dutta, learned counsel for appellants in other appeals, it will be necessary to note a few background facts leading to these proceedings.

Introductory Facts.

NOIDA is an authority entrusted with the task of developing lands in the district of Ghaziabad in the Stat of Uttar Pradesh. In the year 1976, NOIDA had acquired large tracts of lands in the Ghaziabad district including lands of village Chhalera Banger for the planned industrial development of Ghaziabad district including lands of village Chhalera Banger for the planned industrial development of Ghaziabad. At that stage, the State of Uttar Pradesh, at the instance of NOIDA had invoked the provisions of sub-sections (1) and (4) of Section 17 of the Act as acquisitions for the purposes of NOIDA was considered to be of an urgent nature. Thereafter, again in the year 1987, further lands were acquired from the same village for the purpose of NOIDA by the State of Uttar Pradesh issuing notification under Section 4 of the Act on 30th October, 1987. The said notification was issued without invoking Section 17(4) of the Act. After hearing the objections put forward against the acquisition by the objectors concerned, ultimately the State of Uttar Pradesh issued notification under Section 6 of the Act on 14th December, 1989. On that occasion, 353 acres of lands consisting of diverse survey numbers were acquired from the occupants of the lands in village Chhalera Banger. It was thereafter that NOIDA submitted a proposal to acquire the lands under the present acquisition on 14th June, 1988. It also made a written request in this connection on 14th December, 1989 to the State authorities. By a communication dated 14th December 1989 addressed by the personnel officer, Noida to the Special Land Acquisition officer, NOIDA, Ghaziabad, it was submitted that 494.26 acres of land of village chhalera Banger were urgently required for the development of Sector No. 43 and other sectors of NOIDA. Therefore, it was requested that necessary notification under Section 4 read with Section 17 of the Act may be got issued immediately. It was thereafter that on 5th January, 1991, the impugned notification was issued by the Government of Uttar Pradesh in exercise of powers under sub- section (1) of Section 4 of the Act. It was stated therein that the lands mentioned in the Schedule to the notification were required for public interest, that is, for the planned industrial development of district Ghaziabad through NOIDA. It was recited in the said notification that the Governor was of the opinion that sub-clauses of sub-section (1) of Section 17 of the Act shall apply to the aforementioned land because the said land was essentially urgently required for the planned industrial development in District Ghaziabad

through NOIDA and in view of this urgency; and essential requirement, it was also necessary that possible delay for inspection under Section 5- A may be condoned . Therefore, in exercise of powers under sub-section (4) of section 17 of the Act, Governor also directed that provisions of Section 5-A of the said Act shall not be applicable and were dispensed with. This notification was followed by another notification dated 7th January, 1992 under Section 6 of the Act. It was declared therein that the land mentioned in the notification was required in public interest, i.e., for the planned development of District Ghaziabad through NOIDA. It was also stated that the Governor was satisfied that this matter was to be disposed of urgently, therefore, in exercise of power sunder sub-section (1) of Section 17 of the Act he was also pleased to direct that though no decision had been given under Section 11, the Collector of Ghaziabad could take possession of the aforesaid land mentioned in Schedule for public interest after 15 days of the publication of the notice under sub-section (1) of Section 9.

The aforesaid two notifications were brought in challenge by the appellants herein, amongst others before the High Court of Allahabad, as noted earlier. In these writ petitions, the High Court by its order dated 31st march, 1992 directed that status quo may be maintained by the parties to the writ petitions. The State of Uttar Pradesh as well as NOIDA were the contesting respondents in the writ petitions and in the present appeals also they are the main contesting respondents.

Rival Contentions Shri Shanti Bhushan, learned senior counsel for the appellants in some of the appeals and Shri Uma Dutta, learned counsel for the other appellants contended that the impugned notification are null and void mainly on two grounds - (i) that there was no relevant material before the State authorities to enable them to invoke Section 17(4) of the Act and to dispense with the inquiry under Section 5-A of the Act; and that the grounds sought to be made out by the State authorities in this connection were legally unsustainable and, therefore, the direction contained in the impugned notification under Section 4 invoking Section 17 sub-section (4) of the Act and in dispensing with inquiry under Section 5-A was liable to be set aside and consequently notification under Section 6 also was required to be quashed. (ii) It was also contended that in any case the lands occupied by the appellants which were sought to be acquired in the present proceedings were having Abadi - constructions occupied for residential and industrial purposes by the appellants concerned and that a policy decision was taken by the contesting respondents not to acquire land covered by such Abadi. The acquisition proceedings were, therefore, required to be set aside even on that ground. Shri Shanti Bhushan, learned senior counsel appearing for appellants in appeal arising from Special leave Petition (c) No. 20905 of 1995 submitted that these appellants had already filed a suit against NOIDA for permanently restraining NOIDA from acquiring the appellants' land which is covered by the present acquisition proceedings on the ground that it was having Abadi thereon. That the judgment of the Civil Court was rendered on 14th December, 1989 much prior to the issuance of the Section 4 notification in the present case wherein a clear finding was reached by the Civil Court on evidence that there was existing Abadi on the land dispute and the said decision was confirmed by the District Court in Civil Appeal No. 46 of 1990 on 17th November, 1990. We are informed by learned senior counsel, Shri Mohta, for respondent NOIDA that the decision of the District Court has not become final and is pending scrutiny in second Appeal before the High Court of Allahabad. Shri Shanti Bhushan, learned senior counsel for the appellants, in support of his submission that there was an existing Abadi on the land sought to be acquired, invited out attention to the relevant

evidence on the record and contended that in any view of the matter appellants' land having Abadi in the light of the policy consistently followed by the contesting respondents could not have been acquired. Learned counsel appearing in the other appeals, Shri Uma Dutta also adopted these very contentions in support of his appeals and submitted in addition that the High Court had erred in taking the view that the subjective satisfaction for invoking the provisions of Section 17(4) of the Act was not independent of satisfaction for invoking Section 17 sub-section (1) and that both these satisfactions were really independent of each other and had to be arrived at as such.

In support of the aforesaid contentions learned senior counsel for the appellants placed before us certain decisions of this Court to which we will refer at an appropriate stage in the latter part of this judgment. It was contended by learned counsel for the appellants that the High Court had erred in taking the view that the State was justified in involving the provisions of Section 17(4) of the Act on the facts and circumstances of the cases. He, however, fairly stated that if it is held that the State authorities could not have dispensed with Section 5-A inquiry and if the appellants are to be given an opportunity to put forward their written objections before the acquiring authority under Section 5-A of the Act then the second question regarding Abadi lands immunity from being acquired may not be decided at this stage. Hence this question may also be permitted to be raised by the objectors in section 5-A proceedings.

Repelling these contentions, Shri Mohta, learned senior counsel for NOIDA and Dr. N.M. Ghatate, learned senior counsel appearing for the state of Uttar Pradesh contended that no error was committed by the High Court in upholding the applicability of Section 17 sub-section (4) to the present proceedings as there was sufficient material before the authorities to come to that decision. That the High Court rightly held that for acquisition of the present type wherein large acreage of lands had to be acquired for the purpose of the planned industrial development of the area undertaken by NOIDA, urgency clause could be legitimately invoked. Urgent situation was implicitly in such acquisition proceedings and if Section 5-A inquiry was not dispensed with, years would have passed before Section 6 notification could have been issued. It was also submitted by them that the material relied upon by the State authorities for dispensing with inquiry under Section 5-A of the Act was quite relevant and this Court would not sit in appeal over the subjective satisfaction of the authorities in this connection as it is well settled that if such subjective satisfaction for invoking section 17(4) of the Act is found to be based on relevant material it cannot be challenged in a court of law by requesting the court to re-appreciate such evidence especially when there was no challenge to the acquisition proceedings on the ground of mala ides. The High Court's decision in this connection, therefore, requires to be upheld. It was also submitted that possession of the lands in question was already taken by NOIDA on 30th March, 1992 prior to the date on which the High Court granted status quo order. It was next contended that the appellants' lands cannot be said to be having Abadi as mere stray construction on agricultural lands cannot be termed Abadi. That 'Abadi' is a term of art which connotes construction for residential purposes on village-site lands and it has nothing to do with agricultural lands situate beyond village sites. It was also submitted by Shri Mohta, learned senior counsel for NOIDA, that the Civil Court's judgment which is not final till date had loosely treated lands having construction as Abadi lands and consequently, it could not be urged by the appellants that their lands having some stray construction thereon could not have been acquired under the Act in the light of the policy decision of the State authorities of the contesting

respondents not to acquire lands having Abadi. In this connection, Shri Mohta also submitted that the documentary material which is furnished in the present proceedings by some of the appellants to show that their lands were having Abadi appears to be interpolated and such forged documents cannot be permitted to be relied upon by the appellants. Dr. Ghatate, learned senior counsel for State of U.P. submitted that the state was not a party to the civil Court litigation and hence was in no way bound by the finding arrived at by the Civil Court regarding the abadi nature of the lands under acquisition.

It was lastly contended placing reliance on some of the judgments of this Court, to which we will make a reference hereinafter, that acquisition for the planned development of a township on a large scale would entitle the authorities to invoke urgency provisions of Section 17(4) of the Act and that the High Court has not erred in relying upon this legal position. It was ultimately submitted that as almost 494 acres of lands were sought to be acquired by the impugned notifications and only some of the persons whose lands were being acquired had challenged the notifications in the High Court and that challenge in the present proceedings gets confined to about 40 acres in all, and as the planned development of the sector is already underway and pipelines and other infrastructure facilities are being made available on spot, this court in exercise of its discretionary powers under Article 136 of the Constitution of India may not interfere in the peculiar facts of the case at such a late stage. Learned senior counsel Shri Shanti Bhushan, repelling these contentions, submitted that the material on which contesting respondents relied upon for supporting such an exercise and that there is no universal formula that acquisition for planned development of a township necessarily has to be treated to be of an urgent nature without anything more. The applicability of section 17 (4) of the Act in the peculiar facts of the present case should be treated to be uncalled for. It was submitted that the appellants, given an opportunity to have their written objections under section 5-A of the Act, will fully co- operate in the proceedings and will abide by the appropriate directions regarding maintenance of time schedule for such an inquiry as may be fixed by this Court. Shri Shanti Bhushan further submitted that once it is shown that the impugned notifications were liable to be set aside, on non- compliance with Section 5-A of the Act, which was wrongly excluded by the authorities, then this Court being a final Constitution Court may not refuse appropriate relief to the appellants by not interfering under Article 136 of the Constitution of India. Shri Shanti Bhushan also sought to distinguish judgments of this Court on which strong reliance was placed by learned senior counsel for contesting respondents.

In the light of the above rival contentions, the following points arise for out determination :

1. Whether the State authorities were justified in invoking Section 17(4) of the Act for dispensing with inquiry under Section 5-A of the Act.

2. In any case, whether the appellants' lands have to be treated as immune from acquisition proceedings on the ground that they were having Abadi thereon and were, therefore, governed by the policy decision of the State of U.P. not to acquire such lands.

3. Whether this Court should refuse to exercise its discretionary jurisdiction under Article 136 of the Constitution of India in the facts and circumstances of the case.

4. What final orders ?

What shall deal with these points seriatim.

So far as the question of dispensing with inquiry under Section 5-A is concerned, the scheme of the Land Acquisition Act has to be kept in view. Sub-section (1) of Section 4 of the Act lays down that whenever it appears to the appropriate Government that land in locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect has to be published in the official Gazette and also to proceed further according to the mode laid down in the said provision. Then follows section 5-A, Sub-section (1) thereof provides that any persons interested in any land which has been notified under section 4, sub-section (1), as being needed or is likely to be needed for a public purpose may, within 30 days from the date of publication of the notification, object to the acquisition of the land or of any land in the locality, as the case maybe. Sub-section (2) of Section 5-A of the Act lays down the procedure in connection with such inquiry. The objections under Section 5-a are to be lodged in writing with the Collector and the Collector is required to give the objector an opportunity of being heard in person or by any persons 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 to the Government and in the light of the said report, the appropriate government has to come to its own decision on the objections and such decision is made final under the Act. Then follows Section 6 sub-section (1) which lays down that subject to the provisions of part vii of the Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration can be made by the appropriate Government for acquiring such lands. It is, therefor, obvious that under the normal scheme of land acquisition proceedings under the Act before any land can be acquired, by issuing notification under Section 6, the gamut of hearing of objections to such proposed acquisition as laid down by Section 5-A has to be followed. It is in this light that Section 17 of the Act which permits dispensing with inquiry under Section 5-A in appropriate cases has to be appreciated. Sub-sections (1) and (4) of Section 17 deserve to be noted in extenso. They read as under:

> " 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 land needed for public purpose. such land shall thereupon vest absolutely in the Government, free from all encumbrances.
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> (2) .... (3) .... (3-A) .... (3-B) .... (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 5-A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the date of the publication of the notification under Section 4,

sub-section (1). "

It may be noted that prior to 1984, sub-section (1) of section 17 could be invoked only in cases of lands which were waste and arable and qua acquisition of such lands, if there was any urgency Section 17 Sub-section (1) could b invoked and accordingly even after issuance of notification of Section 6 and before award is passed possession of such lands could be taken on expiry of 15 days of the publication of notice under Section 9 sub-section (1). But if the lands were not waste or arable, neither section 17 sub-section (1) nor section 17 sub-section (4) could have been invoked prior to 1984 qua them as sub-section (4) of Section 17 has a clear linkage with the lands to which provisions of sub- section (1) are applicable. Consequently, prior to 1984, the parent Act did not permit dispensing with inquiry under Section 5-A or for taking possession prior to the award of the acquired lands if the lands were not waste or arable even though there might be any urgency centering round such acquisition. The words 'Waste or arable', however, were deleted from the parent Act by Amending Act 68 of 1984 with the result that now under the main Central Act for any type of lands even if they may be waste or arable, or may not be so, in cases of urgency, provisions of section 17 sub- section (1) can be invoked and equally for any type of lands sought to be acquired, in cases of urgency, the provisions of section 17 sub-section (4) can be invoked, meaning thereby, the intermediate procedure under Section 5-A sandwiched between sections 4 and 6 can be legitimately dispensed with and notification under Section 6 can follow almost on the heels of section 4 notification in cases of urgency , when appropriate direction under Section 17 sub- section (4) is issued by the appropriate Government being subjectively satisfied about the requisite requirement s about invoking these provision. Even though under the Central Act, no such power could have been invoked prior to 1984 for lands which were not waste or arable so far as State of Uttar Pradesh was concerned, a special provision was made by amending Section 17 of the Central Act by the Land Acquisition (UP Amendment Act) XXII of 1954. Pursuant to the said State amendment, a new sub-section (1-A) was added to Section 17 of the parent Act in its application to Uttar Pradesh to the following effect:

> "The power to take possession under sub-section (1) may also be exercised in the case of other than waste or arable land, where the land is acquired for or in connection with sanitary improvements of any kind or planned development "

Therefore, so far as the State of Uttar Pradesh in concerned, any type of land after 19th November, 1954 even though, not being waste or arable could be subjected to the provisions of Section 17 sub-section (1). However, so far as sub-section (4) of section 17 was concerned, no amendment was made in the State of Uttar Pradesh till 26th April, 1974, when by the Land Acquisition (U.P. Amendment and Validation) Act VIII of 1974, Section 17 sub-section (4) was also amended by subsisting the words, brackets and figures "sub-section (1), sub-section 1(A) or sub-section (2)" as applicable to the State of Uttar Pradesh. The net result of these two State amendments is that after 26th April, 1974, if lands of any type, apart from being waste or arable, were sought to be acquired under the Land Acquisition Act as applicable to the State of Uttar Pradesh in case of urgency, provisions of Section 5-A could be dispensed with provided such lands were acquired for or in connection with sanitary improvements of any kind or planned development. Thus, this enabling provision was available to the appropriate Government functioning in the State of Uttar Pradesh, If

it was satisfied that the situation was so urgent that Section 5-A inquiry was to be dispensed with in connection with acquisitions of any type of lands for the planned development of any are. However, still one basic requirement remained for being satisfied before such power could be exercised, namely, that there should be case of urgency. Even if the acquisition was for the planned development of any area and there was no material before the appropriate Government for dispensing with inquiry under Section 5-A on the touchstone of any urgency as found by the appropriate Government, the provisions of Section 17 sub-section (4) as amended by the Amending Act VIII of 1974 could not have been invoked. However, the parent Act itself underwent an amendment in 1984, as noted earlier, and the words 'waste or arable' were taken out from the sweep of section 17 sub- section (1) read with sub-section (4) thereof The net result is that after 1984, for acquisition of any type of lands if the appropriate authority is satisfied about the existence of urgency requiring acceleration of taking of possession as per section 17(1) before award or acceleration of issuance of notification under section 6 as per section 17(4) whether such acquisition was for the planned development of any area or for sanitary improvements in the area or for any other public purpose or for a company.

As we are concerned only with the applicability of Section 17 sub-section (4), it will be necessary to find out whether there was any relevant material with the appropriate Government, namely, respondent, State of UP herein, to enable it to arrive at its subjective satisfaction about dispensing with inquiry under Section 5-A in connection with the present acquisition. Before we deal with the judgments of this Court on the point, it will be necessary to quickly glance through the factual backdrop leading to the present proceedings. As we have noted earlier, NOIDA was entrusted with the task of developing areas under its jurisdication and that development could necessarily be a planned development on a large scale. Such development could not be confined only to a few pockets of the land but must necessarily encompass in its fold schemes pertaining to large tracts of lands which were lying undeveloped and which had to be developed on a systematic basis. It is not in dispute between the parties that initially in 1976 large tracts of lands in Ghaziabad District in the State of Uttar Pradesh were acquired from the very village from which the present lands also are sought to be acquired. By a notification dated 30th April, 1976, the State of Uttar Pradesh exercising powers under sub-section 1 of section 4 issued a notification in the name of the Governor of Uttar Pradesh to the effect that various plots of lands mentioned in the notification were needed for public purpose, that is, for the planned industrial development in the district which was then known as Bullandshahr and the said acquisition was through the NOIDA for that purpose. The said notification showed that 121 and odd acres of lands were sought to be acquired and at that stage, Section 5-A inquiry was dispensed with by the State authorities by invoking powers under Section 17 sub-section (4) thereof. This notification worked itself out and was followed by Section 6 notification and various chunks of land were acquired even from village chhalera Banger amongst others. It appears that thereafter necessary development was carried out on the acquired lands by NOIDA and as a part and parcel of the comprehensive plant for industrial development, further lands were sought to be acquired by it by stages as development of any area of township is a long drawn process spread over years. A further notification under section 4(1) was issued by the State of Uttar Pradesh on 30th October, 1987 acquiring further lands for NOIDA from this very village. A number of plots of land from this village were sought to be acquired an they in all amounted to 353 acres of land. At this stage, the state authorities did not think it fit to dispense with inquiry under Section 5-A of the

Act and invited parties affected by the proposed acquisition of the lands by submitting objections in writing to the Collector, Ghaziabad. The purpose of acquisition was the same, namely, for the planned industrial development in district Ghaziabad through Noida. As by the time, district Bullandshahr was renamed as Ghaziabad. It is, therefore, obvious that for further development in the area, no urgency wad felt at that stage for dispensing with the provisions of section 5-A of the Act. It is not in dispute between the parties that the further acquisition was for developing sector no. 42 in this very Scheme run by NOIDA. The aforesaid notification under Section 4 was followed by notification under section 6 dated 14th December, 1989, within two years of the issuance of section 4 notification dated 30th October, 1987 after the inquiry under section 5-A was over and the report was submitted to the appropriate Government. It is interesting to note that on the very day on which section 6 notification was issued on 14th December 1989, acquiring these additional lands, NOIDA proposed to the State Government that further 494.26 acres of land out of this very village Chhalera Banger were urgently required for the development of Section 43 and other sectors of NOIDA. It was also requested that necessary notification under Section 4 read with Section 17 of the Act with regard to the said lands may be issued immediately. We were informed by senior counsel, Shri Mohta for NOIDA that even though in the earlier acquisition of 1987, pursuant to section 4 notification inquiry under Section 5-A was not dispensed with, by the time Section 6 notification came to be issued section 17(1) was resorted to as urgency had developed at least by the end of December, 1989. If that is so, it was expected that pursuant to the requisition of 14th December, 1989 by NOIDA invoking urgency powers of the State Government, consequential notification under Section 4(1) would have seen light of the day at the earliest in connection with acquisition of proposed 494.26 acres of land for the development of Section 43 and other sectors. But curiously enough, nothing happened urgently and Section 4 notification which is impugned in the present case was issued on 5th January, 1991. Thus despite the invocation of urgency by NOIDA by its letter dated 14th December, 1989 it appears that the State did not think the said proposal to be so urgent as to immediately respond and to issue notification under Section 4 read with Section 17, sub-section (4) till 5.1.91. more than one year elapsed in the meantime. Why this delay took place and why the State did not think it fit to urgency respond to the proposal of Noida has remained a question mark for which there is no answer furnished by the respondent authorities in the present cases and nothing is brought on the record by them to explain this delay. It has, therefore, necessarily to be presumed that despite the emergency powers of the State Government being invoked by NOIDA, the State authorities in their wisdom did not think the matter to be so urgent as to immediately respond the promptly issue section 4 notification read with Section 17(4). The impugned notification of 5.1.91 recites that for public interest, i.e., for the planned industrial development through NOIDA, the lands mentioned in the schedule to the notification were required to be acquired. It was further recited in he notification that because the lands were essentially required for the planned development in District Ghaziabad through NOIDA, in exercise of powers under sub-section (4) of Section 17, provisions of Section 5-A of the Act were dispensed with. The learned senior counsel for the appellants vehemently submitted that in the background of the aforesaid fact situation, it appeared that when the State authorities invoked sub-section (4) of section 17 on 5.1.91 in connection with present acquisition, in fact, there was no urgency as even earlier in 1987, when from this very village for the very purpose lands were acquired, the State authorities in their wisdom did not think it fit to apply urgency clause and to dispense the inquiry under Section 5-A and in fact heard the objectors. Even that apart, despite proposal to acquire this

land was moved by NOIDA, as early as on 14th June, 1988, and even thereafter when the request was sent in this connection on 14th December, 1989, the State authorities did not think the situation to be so urgent as to respond quickly and could wait for more than one year. When the appellants in the writ petitions before the High Court raised their grievances regarding dispensing with inquiry under Section 5-A being not backed up by relevant evidence and the subjective satisfaction of the State in this connection was brought in challenge, all that was stated by NOIDA in its counter in para 26 was to the effect that the contents of paras 25 and 26 of the writ petition were denied and that the petitioners were not able to point out any lacunae in the proceedings under the Land Acquisition Act. Position was no better so far as the counter of the State authorities was concerned. In paragraph 24 of the counter before the High Court all that was stated was that paragraphs 25 and 26 of the writ petition were denied. When we turn to paragraphs 25 and 26 of the writ petition, we find averments to the effect that the urgency of the acquisition was only for the purpose of depriving the petitioners of their rights to file objections under Section 5-A and their right to hold the possession till they got compensation for which the respondents had issued notification under Section 17(1) as well as notification under Section 17(4) of the Act. But so far as the process of the acquisition was concerned, the respondents were taking their own time, which would be evident from the fact that the notification under Section 4 read with Section 17(4) was issued on 5th January, 1991 but was published in the newspaper on 30th March 1991, whereas the declaration under Section 6 of the Act was made on 7th January 1992 and that on the one hand respondents had deprived the petitioners of filing their objections under Section 5-A of the Act on the ground of urgency of acquisition, but on the other hand, they themselves had taken more than nine months in issuing the declaration under section 6 of the said Act. This conduct of the respondents falsified their claim of urgency of acquisition. These averments in the writ petitions, to say the least, almost went unchallenged and nothing concrete could be pointed out by the respondents before the High Court to support their stand as noticed from their counters referred to earlier. thereafter, an additional model counter affidavit was filed by the State authorities in the High Court for explaining the reasons why section 5-A inquiry was dispensed with. In paragraph 9 of the additional model counter affidavit it was averred that it was necessary to bring material before the date of notification under Section 4 for showing as to why sub-section (4) of Section 17 was invoked. The additional material which was produced before the High Court was by way of Annexures - CA3, CA4 and CA 5. When we turn to these annexures, we find that Annexure - CA 3 is a letter dated 21st April, 1990 written by the District Magistrate, Ghaziabad, to the Joint Secretary, Industries, Government of Uttar Pradesh. It recites that on examination, it was found that the land was immediately required in public interest so that the development work in the said land could be carried out smoothly. What was the nature of urgency is not mentioned in the said letter. Therefore, the position remains as vague as it was earlier. When we turn to Annexure

- CA 4 which is dated 12th June, 1990, we find that the District Magistrate, Ghaziabad wrote to the Joint Secretary, Industries, State of U.P., that as to how many farmers were going to be affected by the proposed acquisition. It does not even whisper about the urgency of the situation which requires dispensing with Section 5-A inquiry. The last Annexure - CA 5 is the letter dated 14th December; 1989 written by NOIDA to the Land Acquisition Officer proposing urgent acquisition of the lands in question. We have already made a reference to the said letter. It recites that if immediate action for acquisition of the aforesaid lands adjacent to Sector 43 for development of which the acquisition was

to be resorted to was not taken them there was possibility of encroachment over this area. That other land adjacent to this sector was already being proposed for the botanical garden. To say the least, possibility of encroachment over t he area cannot by any stretch of imagination be considered to be a germane ground for invoking urgency powers for dispensing with Section 5-A inquiry. Even if acquisition taken place urgently by dispensing with inquiry under Section 5-A and the possession is taken urgently after Section 6 notification within 15 days of issuance of notice under Section 9 sub-section (1), even then there is no guarantee that the acquired land would not be encroached upon by unruly persons. It is a law and order problem which has nothing to do with the acquisition and urgency for taking possession. Even that apart, it is easy to visualise that if objectors are heard in connection with Section 5-A inquiry and in the meantime, they remain in possession of land sought to be acquired they would be the best persons to protect their properties against encroachers. Consequently, the ground put forward by NOIDA in its written requested dated 14-12-1989 for invoking urgency powers must be held to be totally irrelevant. Even that apart, if that was the urgency suggested by Noida on 14-12-1989, we fail to appreciate as to how the State authorities did not respond to that proposal equally urgently and why they issued notification under Section 4 read with Section 1794) after one year in January, 1991. On this aspect no explanation whatsoever was furnished by the respondent State authorities before the High Court. It is also interesting to note that even after dispensing with inquiry under Section 5-A pursuant to the exercise of powers under Section 17(4) on 5th January, 1991, Section 6 notification saw the light of the day only on 7.1.1992. If the urgency was of such a nature that it could not brook the delay on account of Section 5-A proceedings, it is difficult to appreciates as to why section 6 notification in the present case could be issued only after one year from the issuance of Section 4 notification. No explanation for this delay is forthcoming on record. This also shows that according to the State authorities, there was no real urgency underlying dispensing with Section 5-A inquiry despite NOIDA suggesting at the top of its voice about the need for urgently acquiring the lands for the development of sector no. 43 and other sectors.

So far as the present proceedings are concerned, the situation was tried to be salvaged further in the counter- affidavit filed on behalf of NOIDA. Its working secretary Ram Shankar has filed a counter-affidavit in the present proceedings explaining the necessity to apply emergency provisions. It has been averred in para 9 of the counter to the effect that what necessitated application of emergency provisions was imminent possibility of unauthorised construction and/or encroachment upon the suit land which would have hammered the speedy and planned industrial development of the area which was the purpose of acquisition proceedings. This stand is in line with the earlier stand of NOIDA in its written requisition dated 14th December, 1989. We have already seen that the said stand reflects a ground which is patently irrelevant for the purpose of arriving at the relevant subjective satisfaction by the State authorities about dispensing with Section 5-A inquiry. We could have appreciated the stand of the State authorities for invoking urgency clause under Section 17(4) of the Act on the ground that when about 500 acres of land were to be acquired for further planned development of Sector 43 and other sectors of Noida, as mentioned in the impugned notification, hearing of objectors who might have filed written objections when there are large number of occupants of these lands and who possess about 438 plots of land under acquisition, would have indefinitely delayed the acquisition proceedings and years would have rolled by before Section 6 notification could have been issued. Under these circumstances, the entire further development of

the area would have, on the peculiar facts and circumstances of these cases, come to a grinding halt. Such a stand would have justified the subjective satisfaction of the authorities for invoking Section 17 (4) of the Act. Such satisfaction then could not have been gone behind by court of law. But unfortunately for the respondents such was not their case nor did they even whisper in these cases that these aspects were kept in view while dispensing with Section 5-A inquiry. The court cannot obviously, therefore, make out a new case for them which is not pleaded in these proceedings to justify their action.

In the light of the aforesaid factual position emerging on the record of the case it becomes clear that there was no relevant material before the State authorities when it invoked powers under sub-section (4) of section 17 for dispensing with Section 5-A inquiry while issuing the impugned notifications under Section 4 followed by Section 6 notification of 7.1.92.

It is in the background of the aforesaid fact situation that we now turn to consider the relevant decisions of this Court on which strong reliance was placed by either side before us. We may note that the High Court while repelling the contention centering round the question of dispensing with inquiry under Section 5-A of the Act has placed strong reliance on the two decisions of this Court having noted that as large acres of lands were to be acquired, it was necessary for the State to dispense with inquiry under Section 5-A. In the case of State of U.P. etc. v. Smt. Pista Devi and others [(1986) 4 SCC 251], a Bench of two learned Judges of this Court speaking through E. S. Venkataramiah, J., (as he then was) had to consider the fact situation existing in Meerut city which was densely populated part of the State of Uttar Pradesh and was growing very fast. A Development Authority was constituted under the provisions of U.P. Urban Planning and Development Act, 1973 for the purpose of tackling the problem of town planing and urban development. 662 bighas 10 biswas and 2 biswanis of land situate din the surrounding villages in the periphery of Meerut town were sought to be acquired urgently by dispensing with inquiry under Section 5-A. The High Court before which the acquisition proceedings were challenged took the view that because there was delay of one year between Section 4 and Section 6 notifications, the urgency clause under Section 17(4) was wrongly invoked. Upturning the said decision of the High Court, this Court held that the delay of one year was clearly explained on the facts of the case as there was a corrigendum to be issued to Section 4 notification and when it was pointed out to the State authorities by the Collector, the authorities issued the corrigendum and simultaneously issued section 6 notification. Thus the delay of one year between Section 4 and Section 6 notifications was satisfactorily explained by the authorities in that case. But even that apart, the nature of the population pressure in the Meerut town and the urgent need for providing for housing accommodation to those residents in view of this Court's directions in the aforesaid decision, authorities were justified in invoking powers under Section 17 (4) of the Act. it is no doubt true that in the aforesaid decision, this Court referred to the earlier three Judge Bench judgment of this Court in the case of Narayan Govind Gavate and others etc. v. State of Maharashtra and others etc. [(1977) 1 SCC 133] on which strong reliance was placed by Shri Shanti Bhushan, learned senior counsel for the appellants and observed that perhaps at the time to which the said decision related 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 inquiry under Section 5-A of the Act. But even on this basis it has to be shown by the authority invoking such emergent action to satisfy the Court when challenge is raised that the particular development of residential areas concerning the acquired lands in the then existing fact situation required dispensing with Section 5-A inquiry. In the present case no such data was even whispered about by the respondents either before the High Court or before us, as we have seen earlier. Apart from that, as noted in the said judgment, the delay between Section 4 and Section 6 notifications was adequately explained and that is how the acquisition was upheld by this Court. With respect, the High Court seems to have read much more in the said decision than what was contemplated by this Court when it delivered the said decision. In the case of Rajasthan Housing Board and ors. vs. Shri Kisan and ors. [(1993) 2 SCC 84], another Bench of two learned Judges of this Court consisting of Kuldip Singh and B.P. Jeevan Reddy, JJ., had to consider the question of urgency requiring dispensing with Section 5-A inquiry in connection with a housing scheme promulgated by the Rajasthan Housing Board for settling Harijans who were the weaker Sections of the Society. The Court in para 14 of the Report noted that there was material before the Government in the case upon which it could have acted when it formed the requisite opinion that it was a case calling for exercise of power under Section 17 sub-Section (4). The material placed before the Court disclosed that the Government found on due verification that there was an acute scarcity of the land and there was heavy pressure for construction of houses for weaker sections and middle income group people; that Housing Board had obtained a loan of Rs. 16 Crores under a time bound programme to construct and utilise the said amount by 31st march 1983; that in the circumstances the Government was satisfied hat unless possession was taken immediately and the Housing Board permitted to proceed with the construction, the Board would not be able to adhere to the time-bound programmed. It was also noted that there was material on record to show that the Housing 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. It was also noted that satisfaction under Section 17 sub-section (4) was a subjective one and that so long as there was 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. We fail to appreciate as to how the said decision rendered in the peculiar facts of the case before this Court could ever be pressed in the service in the peculiar facts of the present cases to which we have made a detailed reference earlier. No such urgency based on any time bound scheme is found in the present cases as was in the case of Rajasthan Housing Board (supra). It is, of course, true that the High Court has noted that large areas of lands are being acquired for NOIDA and the activity carried out by it in the region is very laudable and that NOIDA not only is an authority constituted under the Act of 1976 but also caters to a well developed locality which is situated in near proximity to Delhi and the entire concentration of the State of Uttar Pradesh is to develop it in such a fashion so as to attract the biggest entrepreneurs from India and abroad. NOIDA is the only jewel in the industrial crown of the State of UP and, therefore, acquisition of land for the planned industrial development in NOIDA is nothing but emergent. We fail to appreciate as to how the High Court could persuade itself to come to the aforesaid conclusion about emergency when such was not the case pleaded either by the State or by NOIDA before it. The only justification with which they

came forward was about the possibility of encroachers usurping the land if it was not acquired urgently. That ground, as we have noted earlier, to say the least, is totally irrelevant one for basing any subjective satisfaction of the State authorities for invoking powers under sub-section (4) of Section 17.

It is time for us now to refer to a few other judgments to which our attention was invited by learned senior counsel for the respective parties.

In the case of Narayan Govind Gavate others etc. v. State of Maharashtra & Ors. etc. [(1977) 1 SCC 133], a three-Judge Bench of this Court speaking through Beg, J. had to consider the question whether invocation of powers under Section 17 sub-section (4) of the Land Acquisition Act for dispensing with the inquiry under Section 5-A in connection with acquisition of land for development of industrial areas and residential tenements could be justified on the facts of that case. The following pertinent observations in paragraphs 40, 41 & 42 of the Report were pressed in service:

> " 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 fact 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 5A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries under Section 5A of the Act to be completed without any 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 5A of the Act.
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> 41. Again, the uniform and set recital of a formula, like a ritual of mantra, apparently applied mechanically to every case, itself indicated that the mind of the Commissioner concerned was only applied to the question whether the land was waste or arable and whether its acquisition is urgently needed. Nothing beyond that seems to have been considered. The recital itself shows that the mind of the Commissioner was not applied at all to the question whether the urgency is of such a nature as to require elimination of the enquiry under Section 5A of the Act. If it was, at least the notifications gave no inkling of it at all. on the other hand, its literal meaning was that nothing beyond matters stated there were considered.
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> 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 5A 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 5A of the Act. The recitals in the notifications, on the other hand, indicate that elimination of the enquiry under Section 5A 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 5A of the Act. It is certainly a case 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 5A 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 101 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."

It is no doubt true that the aforesaid decision of three Judge Bench of this Court was explained by latter to Judge Bench decision of this Court in State of U.P. v. Smt. Pista Devi (supra) as being confined to the fact situation in those days when it was rendered However, it is trite to note that the latter Bench of two learned judges of this court could not have laid down any legal proposition by way of a ratio which was contrary to the earlier decision of three Judge Bench in Narayan govind Gavate (supra). In fact, both these decisions referred to the fact situations in the light of which they were rendered.

Our attention was also invited by shri Shanti Bhushan, learned senior counsel for the appellants to a decisions of a two Judge Bench of this Court in the case of State of Punjab and Anr. vs. Gurdial Singh and Ors. [(1980) 2 SCC 471] wherein Krishna Iyer, J. dealing with the question of exercise of emergency powers under section 17 of the Act observed in para 16 of the Report that save in real urgency where public interest did not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 and 19 burke an inquiry under Section 17 of the Act. Thus, according to the aforesaid decision of this Court, inquiry under Section 5-A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has now no longer remained a fundamental right, at least observation regarding Article 14, vis-a-vis, Section 5-A of the Land Acquisition Act would remain apposite.

We may now refer to decision of a three judge Bench of this Court in the case of Nandeshwar Prasad and Anr. vs. The State of U.P. and Ors. [(1964) 3 SCR 425] to which our attention was invited by learned counsel, Shri Dutta appearing for appellants in some of the appeals. Therein Wanchoo J.

speaking for the Court observed to the effect that just as section 17(1) and 17(4) are independent of each other, section 17(1A) and section 17(4) are independent of each other and an order under section 17(1A) would not necessarily mean that an order under section 17(4) must be passed. There cannot be any dispute on this legal position. however, the question with which we are concerned is entirely different. It is to the effect whether on the facts of these cases, there was any relevant material before the State authorities to invoke powers under Section 17 sub- section (4).

It is now time for us to refer to certain latter decisions of this Court to which strong reliance was placed by Shri Mohta, learned senior counsel for NOIDA. In the case of A.P. Sareen and Others Vs. State of U.P. and Others [(1997) 9 SCC 359], a two Judge Bench of this Court consisting of Ramaswamy J. and G. T. Nanavati J, had to consider the question whether the need for urgent possession underlying acquisition proceedings could cease to exist only because of bureaucratic inadvertence. It was held on the facts of that case that urgency continued so long as the scheme was not initiated, action taken and process completed. It is, of course, true that while deciding this question, it is observed that it is well settled legal position that urgency can be said to exist when land proposed to be acquired is needed for planned development of the city or town, etc. The said observation clearly shows that in appropriate cases when acquisition is needed for planned development of city or town urgency provisions can be invoked. This aspect is legislatively recognised by enactment of Section 17(1A) by U.P. legislature. But the said observations cannot be read to mean that in every case of planned development of city or town necessarily and almost automatically urgency clause has to be invoked and inquiry under Section 5-A is to be dispensed with. It will all depend upon the facts and circumstances of each case. The aforesaid observations cannot be held to be laying down nay absolute proposition that whenever any acquisition is to take place for planned development of city or town, section 5-A should be treated to be almost otios or inoperative. Such is not the ratio of the aforesaid decision and nothing to that effect can even impliedly be read in the aforesaid observation which is of general nature. It only suggests that in appropriate cases, urgency clause can be invoked when the land is proposed to be acquired for planned development of city or town.

Another decision to which our attention was invited by Shri Mohta, learned senior counsel for NOIDA is reported in (1996) 2 SCC 365 [Ghaziabad Development Authority Vs. Jan Kalyan Samiti, Sheopuri, ghaziabad and Anr.]. In that case, a Bench of two learned Judges consisting of K. Ramaswamy and G.B. Pattanaik. JJ examined an entirely different question as to whether notification under Section 6 could be issued simultaneously with the notification under Section 4 (1) When Section 5-A was dispensed with under Section 17 sub- section (4). This decision therefore, cannot be of any avail to Shri Mohta. In the case of Jai Narain and Ors. vs. Union of India and Ors. [(1996) 1 SCC 9], another bench of two learned Judges consisting of Kuldip Singh and S. Saghir Ahmad, JJ. had to examine the question whether invocation of urgency provisions under Section 17 (4) for acquiring lands for constructing a Sewage Treatment Plan (STP) in Okhla area of this city could be said to be well justified. Upholding the said exercise by the acquiring authorities, Kuldip Singh, J in para 3 of the Report clearly noted the peculiar fact situation under which Section 5-A inquiry was dispensed with in that case. It was noted that this Court itself had issued earlier time bound directions for procurement of land for STP in various parts of Delhi. In the aforesaid judgement, it was also observed in an earlier decision dated 24th march, 1995, this Court had

observed that sewage problems were of grave nature and so far as discharge of effluent in Yamuna was concerned, the industries wee the prime contributors apart from MCD and NDMC which were also discharging Sewage directly into the river Yamuna and thereafter on 21st April, 1995, this Court regarding the construction of STP had observed that the treatment of sewage was of utmost importance for health and for supply of pure water to the citizens of Delhi. Any delay in this respect was a health hazard and could not be tolerated. It was also observed therein that this Court had earlier directed to the authorities to take up the work of land acquisition and sewage on war footing. In view of the directions of this Court, therefore, the authorities were bound to apply urgency clause and invoke urgency powers for dispensing with Section 5-A inquiry so that the sewage treatment plant could be established at the earliest and on a war footing. We fail to appreciate as to how the aforesaid fact situation and the direction to the State to move quickly and urgently as issued by this Court which was binding on the State authorities could be legitimately pressed in service by Shri Mohta in the facts of this case which stand on an entirely different footing, as noted earlier.

In the light of the aforesaid discussion, therefore, the conclusion becomes inevitable that the action of dispensing with inquiry under Section 5-A of the Act in the present cases was not based on any real and genuine subjective satisfaction depending upon any relevant data available to the State authorities at the time when they issued the impugned notification under section 4(1) of the Act and dispensed with Section 5-A inquiry by resorting to Section 17 sub-section (4) thereof. The first point is, therefore, answered in the negative, in favour of the appellants and against the contesting respondents.

So far as this point is concerned Shri Shanti Bhushan, learned senior counsel for the appellants submitted that much prior to the issuance of Section 4 notification and after the earlier acquisition of 15 bighas of land from the appellants' own Survey No. 488, as the appellant was apprehending further acquisition of a portion of land on which his construction stood the appellant was constrained to file a civil suit against NOIDA for a declaration that the appellant was the owner and in possession of land measuring 4 bigha 10 biswas comprising in Khasra No. 488 situated in village Chhalera Banger, and abadi stood therein for about 5-6 years. The said suit was registered as Case No. 46 of 1989 in the court of Munsif, Ghaziabad. After hearing the plaintiff and NOIDA, the Civil court came to the conclusion on evidence that there was abadi in the disputed property. The Civil Court also noted the contention of NOIDA which was defendant in that case that if disputed land was abadi land of the plaintiff, then he could file objections under Section 5-A of the Land Acquisition Act against the proposed acquisition proceedings and if his abadi was proved on the disputed land, then his abadi land could be left out. Our attention was also invited to the further fact that the said decision of the Civil Court dated 14th December, 1989 was confirmed by the District Court dated 145 December, 1989 was confirmed by the District Court in appeal on 17th November, 1990. Thus final court of facts came to the conclusion that there was abadi of the appellant on the land in question even prior to the date of Section 4 notification in the present case. It is, of course, true as informed to us by Shri Mohta, learned senior counsel for NOIDA, that the said decision of the District Court is not final and second appeal against the said decision is pending in the Allahabad High Court. Be that as it may, the contention of Shri Shanti Bhushan, learned senior counsel for the appellants, was that there was sufficient evidence on the record of this case to show that the disputed land under acquisition was having abadi since number of years and that was prior

to the issuance of section 4 notification dated 05th January, 1991. he also invited our attention to the further fact that pending the proceeding before the high Court a site inspection report was prepared in connection with diverse lands under acquisition and the appellant's Khasra No. 488 was one of them. This report dated 11th March, 1996 was submitted by Officer on Special Duty, Land Acquisition Department, Revenue Board, U.P. which clearly shows that at the time when the inspection was made of Khasra No. 488 belonging to the appellant, on the extend of 4 acres and 10 bighas of land factory was located and the property was being used also for residential purpose. There was telephone number, there were three electric meters installed, about 60 workers were found working in the factory. Besides, 8 shops and 5 residential houses were existing where families were living. It was also noted that construction was very old and people were residing there for long time and factory was also being run. Learned senior counsel for NOIDA submitted that the aforesaid inspection report was one-sided and it did not indicated whether NOIDA authorities were also present at the time of the said report. The learned counsel appearing for the appellants in the remaining appeals also submitted that there was abadi on the lands occupied by these appellants also. It is submitted on behalf of the appellants by their learned counsel that there is a policy followed by the State of Uttar Pradesh not to acquire lands which are having abadi and consequently if Section 5-A inquiry was held, the appellants could have requested the appropriate authorities not to acquire these lands.

Repelling the aforesaid contention, learned senior counsel for NOIDA submitted that there is some misconception about the concept of abadi. That abadi is a term which refers to village site lands utilised for the residential purposes. He, of course, stated tat it is true that there is a policy adopted by the State of Uttar Pradesh not to acquire lands on which there is abadi, namely, village site lands having residential construction thereon. But according to him, the Civil Court's decree which has not become final tries to equate construction with abadi but in the strict sense of the term it would not be abadi which would be covered by the State policy of not acquiring lands having such abadi as any stray construction made on agricultural lands outside the village sites reserved for putting up construction of residential quarters in villages would not be covered by the State policy of not acquiring such abadi lands. He stated that whatever stand NOIDA authorities might have taken as defendant in the suit cannot bind the state authorities. Dr. Ghatate, learned senior counsel appearing for the State of Uttar Pradesh, also submitted that the State was not a party to the Civil Court litigation. He, of course, stated that there is a State policy in existence as on date under which genuine abadi lands on which abadi is situated within the village sites may not be acquired but only because there are some stray construction so agricultural lands beyond the village sites they would not be covered by such State policy. It was also submitted by Shri Mohta, learned senior counsel for NOIDA and Dr. Ghatate, learned senior counsel for State of U.P. that what is necessary to be seen is whether there was any real abadi on the lands under acquisition on the date of Section 4 notification dated 05th January, 1991 as any subsequent construction put up thereafter by any of the occupants would not create any equitable rights in their favour and any subsequent construction and change of user of the land covered by Section 4 notification cannot be of any avail.

In view of the aforesaid rival contentions, therefore, it appears to us that in the present proceedings arising out of petitions under Article 226 of the Constitution of India it is not possible to come to a definite conclusion on these highly disputed questions of fact, namely, whether the lands in dispute

were part of village site lands reserved for construction of residential houses and whether they were covered by the term 'abadi' so as to subjected to any policy decision of the State for excluding such abadi lands from acquisition proceedings. Even the Civil Court litigation which is still subjudice before the High Court would by itself not bind the State authorities as State of U.P. was not a party to these proceedings as rightly contended by learned senior counsel Dr. Ghatate. Not only that but the High Court in the impugned judgment has referred to the set of evidence on record and has held that there is no evidence showing the extent of construction on the lands. On the other hand, there is a 17- point report by the Tehsildar, Dadri, which is Annexure - 7 to the model counter affidavit filed by the State in which he clearly pointed out that the land sought to be acquired was agricultural and that only boundary wall had been constructed in 11 plots. The High Court has also observed that in exercise of the powers under clause (d) of section 2 read with Section 3 of the U.P. Industrial Area Development Act, 1976 the notification of 17th April, 1976 was published to declare the area comprising the villages mentioned in the schedule annexed thereto, to be called the New Okhla Industrial Development Area. The village chhalera Banger, land of which is shown in Khasra entries is one of the villages comprised in the schedule. The submission of the learned standing Counsel is that this area was already declared as industrial development area and after the notification of 1976 was issued, such area could not have been converted into Abadi. Therefore, a further disputed question would arise as to whether the so-called abadi on these lands sought to be acquired out of the agricultural holdings of the occupants in village Chhalera Banger were subjected to construction of abadi prior to 1976 notification or subsequent thereto. Consequently, no direction can be issued to the State authorities straightaway to release these lands from acquisition by coming to a firm finding that there were existing old abadi on these lands and which were squarely covered by any State policy of not acquiring lands having abadi thereon.

We may also mention at this stage that apart from the appellants in Civil Appeal arising out of S.L.P. (C) No. 20905 of 1995 in cases of other appellants no civil suits were filed and, therefore, in their cases the question even about construction, if any, is totally at large. That the moot question is whether the lands under acquisition in the present case were having abadi at the time of issuance of Section 4(1) notification and whether such construction, if any, could be said to be abadi as covered by a policy decision of the State of U.P. not to acquire such lands. in fairness to Shri Shanti Bhushan it was submitted by him that we may not answer this question one way or the other if the appellants are to be relegated to the remedy of filing objections under Section 5-A of the Act. It is, of course true as found by us on point No. 1 that Section 17 sub- section (4) was not rightly invoked by the authorities in the present cases. However, as will be seen hereafter, while considering point No. 3, we are not inclined to give opportunity under Section 5A to the appellants on the peculiar facts of these cases. All that we can observe at this stage is that the question whether the appellants' lands are covered by any existing policy decision of the State of U.P. for not acquiring lands having abadi thereon, is required to be kept open for consideration of the proper State authorities, as will be indicated by us hereinafter while considering point Nos. 3 and 4. Point No. 2 is answered accordingly.

Point NO. 3.

Now remains the vital question as to whether in the light of our finding on point No. 1 the notification under Section 4(1) so far as it dispenses with Section 5-A inquiry by invoking powers under Section 17 (4) of the Act and the consequential notification under Section 6 are required to be set aside or not. We must keep in view that we are called upon to exercise our jurisdiction under Article 136 of the constitution of India. Such jurisdiction will necessarily have to be exercised in the light of facts and circumstances of these cases. Section 4 notification in the present cases is dated 5th January 1991. It is followed by Section 6 notification dated 7th January 1992. In between the appellants went to the High Court and got status quo order since 31st March 1992.. Result is that till today even after the expiry of 6 years and more, the land acquisition proceedings qua the appellants' lands have remained stagnant. It is also to be kept in view that the impugned notification under Section 6 of the Act was issued for the purpose of planned development of District Ghaziabad through NOIDA and by the said notification, 496 acres of land spread over hundreds of plot numbers have ben acquired. Out of 494.26 acres of land under acquisition, only the present appellants owning about 50 acres, making a grievance about acquisition of their lands have gone to the court. Thus, almost 9/10th of the acquired lands have stood validly acquired under the land acquisition proceedings and only dispute centers round 1/10th of these acquired lands owned by the present appellants. It is a comprehensive project for the further planned development in the district. We are informed by learned senior counsel Shri Mohta for NOIDA, that a lot of construction work has ben done on the undisputed land under acquisition and pipelines and other infrastructure have been put up. That the disputed lands belonging to the appellants may have stray complex of lands sought to be acquired. That if notification under Section 4(1) read with Section 17 (4) is set aside qua these pockets of lands then the entire development activity in the complex will come to a grinding halt and that would not be in the interest of anyone. It was also contended by learned senior counsel for the respondents that it was not the appellants' contention that the proposed acquisition was not for public purpose nor any mala fides were alleged to the behind such acquisition. learned senior counsel, Shri Shanti Bhushan, fairly stated that though the appellants might have mounted a challenge on the ground of mala fides, they have not done so before the High Court nor before this Court. Under these circumstances, we find considerable force in the contention of learned senior counsel for the respondent that it is neither advisable nor feasible to interfere with the acquisition of such large tracts of lands when the occupants of 9/10th of the acquired lands have not thought it fit to challenge these acquisition proceedings and the occupants of only 1/10th of lands are agitating there grievance since more than six years firstly before the High court and then before this Court. The appellants' main grievance centers round the question whether their lands having alleged abadi could be acquired in the light of the State policy for not acquiring such lands. For such a contention, of course, grievance could have been made under Section 5-A inquiry if it was held. But that could have been urged years back before Section 6 notification saw the light of the day in 1992. Now after a passage of more than six years, it would not be feasible to put the clock back and permit the appellants to agitate this contention which appears to be the sole contention for opposing the acquisition proceedings in the facts of the present cases by permitting them to urge this grievance in Section 5-A inquiry which according to them should be held at this stage. We will show presently that this solitary grievance of the appellants could be vindicated before the State authorities themselves by relegating the appellants to proper remedy by way of representation under Section 48 of the Act and when that remedy is available to the appellants and when that is the sold grievance of the appellants, at this stage no useful purpose would be served by striking down the notification

under Section 4(1) qua the appellants so far as invocation of Section 17 (4) is concerned and the consequent notification under Section 6. That we cannot permit upsetting the entire apple cart of acquisition of 500 acres only at the behest of 1/10th of land owners whose lands are sought to be acquired. We may also keep in view the further alien fact that all the appellants have filed reference for additional compensation under Section 18 of the Act. Shri Shanti Bhushan, learned senior counsel, was right when he contended that the appellants could not have taken the risk of getting their reference applications time barred during the pendency of these proceedings. Therefore, without prejudice to their contentions in the present proceedings they have filed such references. Be that as it may., that shows that an award is also made and reference are pending. Under these circumstances for enabling the appellants to have their say regarding release of their lands on the ground that they are having abadi and that the State Policy helps them in this connection the appellants can be permitted to have their grievances voiced before the State authorities under Section 48 rather than under Section 5-A of the Act at such a late stage. Consequently, despite our finding in favour of the appellants on Point No. 1, we do not think that this is a fit case to set aside the acquisition proceedings on the plea of the appellants about non-compliance with Section 5-A at this late stage. it is also obvious that if on this point the notifications are quashed for non-compliance of Section 5-A, that would open a pandora's box and those occupants who are uptill now sitting on the fence may also get a hint to file further proceedings on the ground of discriminatory treatment by the State authorities. All these complications are required to be avoided and hence while considering the question of exercise of our discretionary jurisdiction under Article 136 of the Constitution of India, we do not think that this is a fit case for interference in the present proceedings with the impugned notifications. Point No. 3, therefore, is answered in the affirmative against the appellants and in favour of the respondents.

Now remains the moot question as to what proper orders can be passed in the present proceedings in the light of our findings on the aforesaid points. We have already noted that the real and the only contention of the appellants for effectively challenging the acquisition proceedings is that because their lands are having abadi they are covered by the existing state policy for into acquiring such lands under the Act. Whether these lands are having abadi or not is a vexed question of fact which we have kept open for consideration of appropriate authorities instead of relegating the appellants to the remedy under Section 5-A of the Act. We deem it fit to relegate the appellants to the remedy by way of suitable representation before the appropriate state authorities under Section 48 of the Act. It reads as under:

> " 48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. - (1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.
>
> (2) Whenever the Government withdraws from any such acquisition, the collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

> (3) The provisions of Part III of this Act shall apply, so far as may be , to the determination of the compensation payable under this section."

As laid down by sub-section (1) of section 48 the Government is at liberty to withdraw from the acquisition of any land of which possession has not been taken. Learned senior counsel of the contesting respondents submitted that possession of these lands has already been taken. Our attention was invited to a possession receipt annexed to the counter affidavit filed on behalf of Respondent No. 4, Secretary, New Okhla Industrial Development Authority. It is stated in the counter that NOIDA has been put in possession of the acquired lands from 30th March 1992 and the lands under acquisition now form a part of Sectors 43 and 44 of NOIDA. Secretary of New Okhla Industrial Development Authority, Shri Rama Shankar has also earlier filed counter affidavit to that effect. In para 6 thereof it is averred as under:

> " 6. I further say an submit that the Hon'ble High Court of Judicature at Allahabad on 31.3.1992 passed an interim order to the effect that there would be status quo and/or that the petitioners would not be dispossessed from the land in dispute unless he has already been dispossessed. i say and submit that a day prior to the date on which the interim order was passed, the Petitioner had already lost possession and the 4th Respondent was put in actual physical possession of the land which is the subject matter of this petition."

Our attention was also invited to possession certificate at Page 202 which mentions that for the elands detailed in the Certificate, possession should be given to the Tehsildar/Administrative officer, NOIDA on 30th March 1992. Number of lands are listed totalling to 492.91 acres wherein appellants' khasra numbers are also mentioned. It is difficult to appreciate as to how the possession Certificate for all these numbers of lands would necessarily include actual taking over of number of lands on which there were constructions on the spot at the relevant time. It is also pertinent to note that the possession Certificate is dated 30th March 1992 and the High Court of Allahabad granted status quo order on the next day, i.e., 31st March 1992. It, therefore, appears to us that so far as the appellants' lands are concerned, only an effort was made to take paper possession on 30th March, 1992 and actual possession does not seem to have been taken. No possession receipt signed by any of the appellants could be produced to substantiate that contention. Not only that, as noted earlier, the evidence on record showed that even pending the writ petition, the Site Inspection Report of 11th March 1996 showed that some of the lands in question were actually occupied by residents and the lands were constructed upon and factory was being run. Consequently, it is not possible to agree with the submission of learned senior counsel for the respondents that the possession of the acquired lands belonging to the appellants was actually taken on the spot on 30th March, 1992. It is not in dispute that status quo order granted by the High Court continued all throughout till the dismissal of the writ petition. It was them contended that, before this Court could grant any interim relief, possession appeared to have been taken of these lands at least on 18th November 1995. Our attention was invited to the authority letter written by one Shri Chandra Pal Singh, Additional District Magistrate, Land Acquisition, NOIDA, Ghaziabad that possession should be given on 18th November 1995. it is obviously after the decision of the High Court dated 24th August, 1995. However, it must be noted that this Court by order dated 29th September, 1995 had already granted

ad interim stay limited to the extent that any existing construction should not be demolished without leave of the court and that order has continued all throughout till the hearing of the present appeals. It is, therefore, difficult to appreciate as to how despite the order of this Court, possession of the present appellants' lands could have been taken on 18th November, 195. However, Shri Mehta, learned senior counsel for NOIDA submitted that this Court order was only not to demolish the construction and has nothing to do with taking possession It is difficult to appreciate this submission. If the constructions on the disputed lands under acquisition were not to be distributed, how it could be contended that still the possession of the constructions was with Noida and that they would not demolish the construction having taken their possession. Even that apart, the authority letter dated 18th November, 1995 itself shows the details lands possession of which was given to NOIDA and the land of Survey No. 488 is not one of them. For all these reasons, therefore, it must be held that possession of the lands under acquisition belonging to the present appellants has remained with the appellants till date. Once that conclusion is reached, Section 48 sub-section (1) can be legitimately invoked by the appellants for consideration of the State authorities. It is, of course, true that the said provision gives liberty to the State to withdraw form acquisition of any land but if the appellants are in the position to convince the State authorities that their lands were having abadi on the date on which section 4 notification was issued on 5th January, 1991 and it was that abadi which had continued without any additional construction thereon till the date of Section 6 notification and thereafter and such abadi was squarely covered by the Sate policy of not acquiring lands having abadi, then it will be open to the State authorities to pass appropriate orders for withdrawing such lands from acquisition and give appropriate relief to the applicants concerned. We, therefore, grant liberty to the appellants, if so advised, to file written representations before appropriate authorities of the State of Uttar Pradesh invoking State Government's powers under Section 48 Sub-section (1) of the Act. It is made clear that we express no opinion on the question whether the appellants' lands had such abadi on the date of section 4 notification which would attract the State policy of not acquiring such lands and whether such policy had continued thereafter at the stage of Section 6 notification of 7th January, 1992 and whether such policy is still current and operative at the time when the appellants' representations come up for consideration of appropriate authorities of the state Government. it will be for the Stat authorities to take their informed decision in this connection. We may not be under stood to have stated any thing on this aspect, nor are we suggesting that the Stat must release these lands from acquisition if the State authorities ar not satisfied about the merits of the representations. The State authorities will have to be satisfied on the following aspects in this connection:

(i) Whether there was any abadi on the acquired lands at the time of Section 4(1) notification;

(ii) whether such abadi was a legally permissible abadi;

(iii) Whether such abadi has continued to exist till the date of representation;

(iv) Whether such abadi was covered by any Government policy in force at the time of issuance of Section 4(1) notification and/or section 6 notification for not acquiring lands having such abadi;

(v) whether such Government policy has continued to be in force till the date of representation.

In short, the entire matter is left at large for the consideration of the State authorities in the appellants' representation. We also make it clear that if the appellants file their written representation the aforesaid effect or before 31.8.1998 then the appropriate authorities of the State Government shall consider their representations regarding the feasibility of releasing such lands from acquisition under Section 48(1) of the Act on the ground that there were 'abadis' on these lands at the relevant time and are governed by any existing state policy for releasing such lands from acquisition on that score as indicated hereinabove and for that purpose they may give hearing to the appellants, either personally or through their counsel, and permit them to lead whatever evidence they want to lead in this connection. The State authorities shall consider these written representations within a period of two months from the date such representations are received, i.e. latest by 31.10.1998 and will take appropriate decisions on these representations and will inform the representationists concerned in writing about the decision of the State Government in this Connection.

Subject to the aforesaid liberty given to the appellants, these appeals will, therefore, stand dismissed. We may, however, state that the status quo regrading possession on spot in connection with the appellants' lands shall be maintained by all concerned till 30.11.1998 within that time the consideration of the appellants' representation under Section 48(1) of the Act is completed by the State authorities and result thereof is communicated to the representationists. We also make it clear that if the appellants do not file such representations on or before 31.8.1998 the State authorities will not be required to consider any such representation filed thereafter and the status quo order regarding possession as granted by us will stand recalled after 31.8.1998 qua the concerned appellants who do not file such representations within the time granted by us for the purpose.

Before parting with the present proceedings we may mention one request made by learned senior counsel Shri K. K. Venugopal appearing for respondent No. 5 whose intervention application was granted in S. L. P. (C) No. 20905 of 1995. Learned senior counsel stated that many serious objections are required to be considered against the acquisition of the eland of the intervener and it was his contention that lands were acquired for being allotted to persons closely related to the Chairman and other powers that be, but as these contentions raise disputed question of fact and as Respondent No. 5 had not filed any writ petition in the High Court he may be given liberty to file writ petition under Article 226 of the Constitution of India before the High Court. The said request is reasonable. In the present appeals arising out of judgment of the High Court in writ petitions filed by the appellants, Respondent No. 5's independent grievance cannot be examined. It would, therefore, be appropriate to relegate Respondent No. 5 intervener to the remedy of filing a substantive writ petition under Article 226 of the Constitution of India before the High Court. The respondent-authorities had no objection to such course being adopted. Consequently, Respondent No. 5 - intervener's contentions are not being examined by us in these proceedings. It is trite to observe that as and when Respondent No. 5 files a substantive writ petition under Article 226 of the Constitution of India before the High Court it will be for the High Court to decide the merits of the said writ petition including the question whether the writ petition at such a stage is required to be entertained or not. In short, we express no opinion on the merits of such writ petition that may be filed by the intervener - Respondent No. 5 in the High Court. The Said petition will have to be decided on its merits including the question of its maintainability by the High Court after hearing

the parties concerned.

In the result, these appeals fail and are dismissed, subject to eh aforesaid liberty reserved to the appellants for filing written representations under Section 48 sub- section (1) of the Act. There will be no order as to costs in the facts an circumstances of the cases.

IN THE MATTER OF: