

Mr. Anil Sharma,
Mr. A.K. Mishra,
Mr. A.N. Mishra,
Mr. Santosh Tripathi,
Mr. Deepak K. Jaiswal,
Mr. Dheeraj Singh Bohra,
Mr. S.K. Tyagi,
Mr. Anil Kumar Ojha, &
Mr. Rajendra Singh.

For the State-Respondents : Mr. J.N. Mathur,
Additional Advocate General,
Mr. M.C. Chaturvedi,
Chief Standing Counsel,
Mr. Ramanand Pandey,
Standing Counsel, &
Dr. Y.K. Srivastava,
Standing Counsel.

For the Respondents- Ghaziabad

Development Authority : Mr. Navin Sinha, Sr. Advocate, &
Mr. Ashwani Kumar Misra.

Amitava Lala, J.-- All the aforesaid writ petitions being connected have been placed before me for consideration. The petitioners in all the aforesaid writ petitions describe themselves to be owners of the land. Mr. A.B. Saran, learned Senior Counsel, and Mr. Shashi Nandan, learned Senior Counsel appearing for the petitioners have submitted before this Court that the State Government has acquired the land for development of Hi-Tech Township in

The petitioners came to know from the counter affidavit of the State respondents

By a Government Order dated 17th September, 2007 Hi-Tech Township Policy, 2007 w

Ultimately, they have relied upon certain judgements about applicability of Section 17(4)

Before going into the core issue we have checked up each and every writ petition

Sl. Nos.

Name of Village

Dates of Notifications u/s. 4

Dates of Declaration u/s. 6

Area finally acquired & included in declaration u/s. 6

1

Shahpur Bamhetta

27.11.2009

07.08.2010

44.9081 hectares, or

110.9679 acres.

2

Sadikpura alias

Kazipura.

27.11.2009

08.09.2010

14.381 hectares, or

35.535 acres.

3

Naifal

27.11.2009

23.12.2009

07.08.2010

34.390 hectares, or

84.978 acres.

15.7071 hectares, or

38.812 acres.

4

Bayana

27.11.2009

23.12.2009

07.08.2010

23.649 hectares, or

58.437 acres.

10.896 hectares, or

26.924 acres.

5

Mehrauli

27.11.2009

No declaration

No area acquired as the acquisition itself lapsed.

Thus, the total area acquired for the Hi-Tech township in question is 355.6539 a

Against this background, we have also verified the position, as stated above, from

So far as writ petitions relating to Village Dasna, being Civil Misc. Writ Petition

In view of the aforesaid, now only the writ petitions challenging the acquisition

Mr. Jaideep Narain Mathur, learned Additional Advocate General, appeared along with

The land, which is sought to be acquired and is proposed to be developed as Hi-Tech

District Ghaziabad is an urban town situated in National Capital Region (hereinafter

The State Government issued a Government Order dated 18th May, 2006 laying down

"National Housing and Habitat Policy-1998

3.1.2 The State Governments would-

liberalise the legal and regulatory regime to give a boost to housing and supporting infrastructure

promote private sector and cooperatives in undertaking housing construction for all segments

define the role of public and private agencies particularly in the infrastructure sector

undertake appropriate reforms for easy access to land.

prepare long term programmes to tackle problems in housing.

3.3 Housing Boards Corporations/Development Authorities and other public agencies.

The private sector has higher efficiency but has been hampered by legal constraints in undertaking

Their role should be to facilitate availability of land. They need to move away from direct

The public agencies need to forge partnerships with the private sector and cooperatives

Keeping the user's interest in mind they should devise flexible schemes to meet the user

They should be restructured to eliminate their dependence on budgetary support.

3.4 Role of corporate, private and cooperative sectors-

The Corporate, Private and Cooperative Sectors are to take the lead role in terms of lan

Corporate sector is to be encouraged to provide for housing for staff and to facilitate

"National Urban Housing and Habitat Policy- 2005

The Need for Policy.

Shelter is one of the basic human needs just next to food and clothing. Need for a Natio

Urbanisation and Development

Urbanisation and development go together and rapid pace of development leads to rapid gr

India is undergoing a transition from rural to semi-urban society. Some States (Maharash

3.1.2 The State Government would:

Prepare the State Urban Housing & Habitat Policy.

Review the legal and regulator regime to give a boost to housing and supporting infrastr

Promote and incentivise private sector and cooperatives in undertaking housing and infra

3.1.3 The Urban Local Governments/ Development Authorities would-

Promote planning of housing and industrial estates together with infrastructure services

3.4 Private and Cooperative Agencies would:

Undertake an active role in terms of land assembly, construction of houses and developme

Work out schemes in collaboration with the public sector institutions for slum reconstru

Create housing stock on ownership and rental basis.

5. Specific Action Areas

5.1 Land

Public agencies would continue to undertake land acquisition for housing and urban servi

The State Government has also come out with its policy decision on the issue of

In this background, in order to invite private participation for development of

"That the second party shall comply with the following land use planning norms and regul

(a) Development Area Average Density shall be 150 to 200 persons per hectare.

(b) Land use structure:

Sl. No.	Land use category	Percentage of developed area.
1.	Residential	35-40
2.	Commercial & Offices	4-6
3.	Industrial (Pollution free)	4-6
4.	Public and semi-public	8-10
5.	Green cover, Parks, Open spaces, Playgrounds & Water Bodies.	17-20
6.	Transport & Communication	20-22
7.	Recreational	3-5
8.	Average	100

(c) Zoning regulations as applicable in the respective development area shall be follow

(d) Building Bye-laws as applicable in the respective development area shall be follow

(e) Prevailing density norms shall not be applicable to housing for the Economically W

That the second party shall prepare and submit a Detail Project Report (DPR) of the prop

That the Development Agreement shall contain detailed terms and conditions for implement

That the second party shall complete the Hi-Tech Township Project within a period of fiv

That the second party shall adhere to the concept and features of Hi-Tech Township as ou

That the second party shall have the option to carry out the internal and external devel

That the second party shall construct and sell 10% of the total houses/plots to the Eco

That the land for Government and Public Sector community facilities such as police stati

That the second party shall provide basic infrastructure such as road, drainage, water s

That the Government policies and the relevant codes of B.I.S./I.S. relating to disaster

That the first party shall have the right to supervise the implementation of project in

That to ensure timely completion of the project as per the provisions of the approved DP

That the permission if required, for generation of power for the proposed Hi-Tech Townsh

That the second party shall maintain the various services of the Hi-Tech Township for wh

That the first party reserves the right to make such amendments, additions and alteratio

That any issue which is not covered under this MoU shall be remedied as per the provisio

In the aforesaid manner, the very concept of establishment of Hi-Tech Townships

Since the acquisition of land proposed to be acquired under the respective notifi

The areas proposed to be acquired are essentially being used for agricultural re

In terms of the Government Order dated 17th September, 2007, the amended Hi-Tech

"(26) The Developer Company/ Consortium shall submit the detailed layout

The State Government thereafter issued the impugned notifications. The urgency p

It has further been submitted that under the Policy, the Development Authority s

Ultimately, Mr. Mathur concluded by saying that the plots of land in question ha

As regards dispensation of enquiry ~~Section~~ 5-A of the Act, it has further been sub

In 1971 (1) SCC 671 (Jage Ram and others Vs. State of Haryana and others) agains

Mr. Navin Sinha, learned Senior Counsel duly assisted by Mr. Ashwani Kumar Misra

(a) The project concept of development of new townships in all over the State is a p

"3(f) the expression ''public purpose' includes provision for or in connection w

(i) sanitary improvements of any kind, including reclamation;

(ii) the laying out of village sites, townships or the extension, planned develo

(iii) the settlement of land for agriculture with the weaker section of the peo

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or t

(vi) the provision of land for carrying out any educational, housing, health or

(vii) the provision of land for any other scheme of development sponsored by Gov

(viii) the provision of any premises or building for locating a public office, b

- (b) So far as applicability of Part VII of the Act is concerned, Mr. Sinha has adopted "Explanation 2.-- Where the compensation to be awarded for such property is to be determined by the State Government, the compensation shall be determined by the State Government."
- (c) There were sufficient materials before the State Government to invoke the urgency clause.
- (d) The lands acquired under the impugned notifications already stand earmarked in the State Government's plan.
- Mr. Sinha wanted to explain in detail three basic questions, which have been raised by the counsel for the State Government.
- (I) Whether acquisition in question is outcome of colourable exercise of power?
- (II) Whether there was any justification for the State Government to invoke Section 17(1) of the Act?
- (III) Whether the acquisition is not for public purpose but for company under Part VII of the Act?
- Before advertizing to the issues involved, Mr. Sinha wanted to refer the project, which was approved by the State Government. He has submitted that the project for developing Hi-Tech townships, as a policy, was approved by the State Government. The State Government at its end in the year 1995 formulated a Housing Policy. Under this policy, the State Government and the public authorities noticed that the agricultural land was being converted into residential land. The State Government decided to develop townships. For development of a township, offers will be invited from the private developer. The State Government decided to develop townships. For development of a township, land shall be acquired by the Development Authority. The State Government decided to develop townships. For development of a township, acquisition cost shall have to be borne by the developer company but it shall be reimbursed by the State Government. The State Government decided to develop townships. For development of a township, the land shall be given to the developer company on lease for a period of 90 years. The State Government decided to develop townships. For development of a township, land shall be developed by the developer company strictly in accordance with the plan. The State Government decided to develop townships. For development of a township, the entire infrastructure in the township will have to be developed by the developer company. The State Government decided to develop townships. For development of a township, the developer company shall make available land to the State Government for the purpose of the project. The State Government decided to develop townships. For development of a township, the developer company shall carry out project strictly as per the plan and the conditions. The State Government decided to develop townships. For development of a township, the State Government shall retain 25% of the transferred land under its control, for the purpose of the project. In terms of the said policy of 22nd November, 2003, advertisements were published. After the selection process was completed on 21st May, 2005, the State Government decided to develop townships. On 30th November, 2005 a memorandum of understanding was signed between the developer company and the State Government. Thus, in view of the changed scenario the memorandum of understanding so executed is not valid.

So far as the above three points are concerned, Mr. Sinha submitted as under:

(I) Colourable exercise of power:

Indisputably, true purpose of acquisition was the development of a new urban town

The dominant purpose, for which the power of eminent domain was exercised, was e

In such circumstances, Mr. Sinha has pointed out before us that:

- (a) there is no allegation or material in the writ petitions that the policy itself
- (b) there is neither any allegation nor material to establish that the private devel
- (c) the selected developer company came into picture only after the project had been

In support of his contentions, Mr. Sinha has relied upon the judgement of the Su

(II) Acquisition is for a public purpose:

Broadly speaking, public purpose would mean a purpose which is beneficiary to th

Tenth report of the Law Commission of India has considered the issue whether the

Bearing the above in mind, it would be correct to assert that the singular test

In the present cases, the acquisition notifications clearly state that the land

In AIR 1960 SC 1203 [Babu Barkya Thakur Vs. State of Bombay (now Maharashtra) an

(III) Acquisition is not covered by Part VII of the Act:

Mr. Sinha has submitted that it is being argued on behalf of the petitioners tha

The fact that there was absolute transparency in the process of selection is app

Going to the issue of Part-II and Part-VII of the Act, it is worthwhile to note

In the case of an acquisition for a company, the purpose is acquisition for the

Coming to the 2nd test, undisputedly in the present cases the entire acquisition

In Sooraram Pratap Reddy (supra) it has been held on the basis of the judgement

In view of the above, following facts stand established:

- (A) Project was conceived by the State Government and not by the Company.
- (B) It was policy decision of the State Government that the new urban townships be c
- (C) In the Master Plan, the land use for development of new urban townships was earm

Therefore, from the above discussions, the following issues stand settled:

- (i) Acquisition is not for a project of or conceived by the company.
- (ii) Acquisition is not presided by any application of the company for acquisition of
- (iii) Acquisition is for the development of urban township in the mode and the manner
- (iv) This is a public purpose.
- (v) The land for the project is being provided by the State Government for implement
- (vi) The land is being provided to the developer company on lease of 90 years and is
- (vii) The payment of 90% of acquisition cost to be borne by private developer once rec
- (viii) Since the payments have been made from or out of public revenue, provisions of P
- (ix) 10% of land acquisition cost, in any view of the matter, is being incurred by th

Mr. Sinha submitted that in view of the above, the acquisition is not for the co

A detailed discussion with regard to payment of acquisition cost is required to

".....In view of the fact that at the relevant point of time the municipality

In respect of the question whether the State Government was justified in ~~Section~~

Mr. Sinha submitted that large number of land holders are likely to be affected

He further submitted that the State in its record and affidavits has asserted th

Reliance, as has been placed by the petitioners, on the judgement of the Supreme

In order to understand the ratio of various judgements relied upon by the petiti

In so far as the judgement of the Supreme Court reported in 2009 (10) SCC 115 (B

However, it would be apposite to refer to the latest judgement of the Supreme Co

After conclusion of hearing when the judgement was reserved, we have come across

Since such judgement and order of the Supreme Court i.e. Sri Radhy Shyam (supra)

- (a) Dismissal of the writ petition by the High Court only on the technical ground an
- (b) Abadi (residential) property of the appellants therein was acquired without affo
- (c) While acquisition was made in respect of abadi land of the appellants, huge chun

Mr. Mathur has submitted that none of the contingencies are available in the pre

"50. That, the contents of paragraph no. 9 of the writ petition are not admitted.

That apart, one aspect has not been pointed out before the Supreme Court that pl

"(1-A) The power to take possession under sub-section (1) may also be exercised

Therefore, having those distinguishing features the ratio of such judgement of t

When we have called upon the writ petitioners to give reply to such submissions

So far as other petitioners are concerned, Mr. S.S. Shukla, learned Counsel appe

Let us confine ourselves to the existing Acquisition Act, 1894. The law is old one

Against this background, let us see whether the land was acquired for the public

Moreover, when this city falls within NCR, no planned development can be made by

An Act to provide for the constitution of a Planning Board for the preparation of a pla

Sections 18, 19 and 20 of the Act, 1985 being relevant for the purpose are also quoted h

"18. Preparation of Project Plans.--A participating State, or the Union

19. Submission of Sub-Regional Plans to the Board.--(1) Before publishi

(2) The Board shall after examining a Sub-Regional Plan, communicate, within si

(3) The participating State, or, as the case may be, the Union Territory, shal

20. Implementation of Sub-Regional Plans, etc.-- Each participating Sta

Therefore, we conclude by saying that the public purpose is not vitiated by the

So far as colourable exercise of power is concerned, we find that the Government

Now let us confine our discussion with regard to dispensation of Section 5-A of the Act.

In the instant cases, a Cabinet decision was taken to acquire the land in 2003 and

In the open Court, we have examined the desire of the petitioners. It appears that

So far as applicability of Sections 17(1) & 17(4) of the Act i.e. urgency clause is concerned

Generally, the Court does not want to interfere with the eminent domain of the State

"19. It was also held in the further judgement of this Bench reported in 2007

"We do not find any specific provision of law for making deduction from the market

20. Previously the lands were being acquired for the public purpose. Now in

Coming back to the question of dispensation, we see it requires immediate need of

At best, scope can be extended upto immediate visible need of public purpose. However

Further, we are aware that barren lands are likely to be utilized for such purpose

Therefore, we are of the view that there is utmost necessity of hearing the petitioners

Against this background, we make a time bound programme to complete the course of

The petitioner/s will make their application before the Collector within a period of

With the above observations and order, the remaining writ petitions relating to

(Justice Amitava Lala)

I agree.

(Justice Ashok Srivastava)

Dated: 19th August, 2011.

SKT/-

Hon'ble Amitava Lala, J.

Hon'ble Ashok Srivastava, J.

Under the authority of the Hon'ble Chief Justice additional cause list has been printed for the purpose of delivery of judgement and the same has been delivered at 02.00 P.M. in the Court upon notice to the parties.

The writ petition is disposed of, however, without imposing any cost.

Dt./- 19.08.2011.

SKT/-

For judgement and order, see order of the date passed on the separate sheets (sixty four pages).

Dt./-19.08.2011.

SKT/-