2025:AHC:186414-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Reserved on 11.09.2025

Delivered on 17.10.2025

WRIT - C No. - 4986 of 2005

Hatam Singh and others

…..Petitioner(s)

Versus

State of U.P. Thru Secy. Housing and Urban Planning and Anr.

…..Respondent(s)

Counsel for Petitioner(s)	:	Pankaj Dubey, Pradeep Kumar Sinha, R D Tiwari, Shiv Kant Mishra
Counsel for Respondent(s)	:	Ashwani K. Mishra, Jagannath Maurya, Mahendra Pratap, Mahesh Chandra Chaturvedi (Senior Adv.), Rajesh Dutta Pandey, Tejasvi Misra, Ved Byas Mishra

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Connected with

1.	WRIC/35668/2005	Smt. Deepa Garg vs. State
2.	WRIC/39171/2005	M/s. Shri Nemi Nath Foundation vs. State
3.	WRIC/76749/2005	Dharam Singh vs. State
4.	WRIC/76751/2005	Pushpendra Kumar Singh vs. State
5.	WRIC/77647/2005	Anoop Singh vs State
6.	WRIC/77668/2005	Smt. Devki Singh vs. State
7.	WRIC/77670/2005	SM Chopra vs. State
8.	WRIC/77902/2005	Raj Singh vs. State
9.	WRIC/78873/2005	Rita Devi vs State
10.	WRIC/1622/2006	Madhuban Sahkari Awas Samiti vs. State
11.	WRIC/16796/2006	Jhagir Singh vs. vs. State
12.	WRIC/363/2006,	Ratan Singh vs. State
13.	WRIC/52592/2006	SBH Sahkari Avas Samiti Vs. State
14.	WRIC/5495/2006	Dhanpal vs. State
15.	WRIC/5503/2006	Gaggan Deep Gandhi vs. State
16.	WRIC/5505/2006	Anita Babbar vs. State
17.	WRIC/56295/2006	Jagat Singh vs. State
18.	WRIC/56588/2006	Daya Nand Sharma vs. State

19.	WRIC/5722/2006	Rajiv Chaudhary vs. State
20.	WRIC/43918/2007	Devi Singh vs. State
21.	WRIC/47797/2009	Shri Anil Kumar Jain vs. State
22.	WRIC/4626/2010	Bheem Singh vs. State
23.	WRIC/47339/2010	Ram Veer vs. State
24.	WRIC/36270/2011	M/s SV Liquor India Ltd. Vs State
25.	WRIC/4566/2011	Bhuley Ram vs. State
26.	WRIC/2476/2012	Balwant Rai Kathuria vs. State
27.	WRIC/28223/2012	Amarjeet Kaur Gandhi vs. State
28.	WRIC/16390/2013	Surendra Singh vs. State
29.	WRIC/17162/2013	Smt. Vimlesh Bansal vs. State
30.	WRIC/21562/2013	Sunil Sachdev vs. State
31.	WRIC/21565/2013	Ratan Singh and 15 others vs. State
32.	WRIC/60223/2014	Ravindra Singh vs. State

Court No. - 21

HON'BLE MANOJ KUMAR GUPTA, J.
HON'BLE ANISH KUMAR GUPTA, J.

(Per : Hon'ble Manoj Kumar Gupta, J.)

For ease of discussion, the judgment has been structured as follows:-

INTRODUCTION

PREVIOUS JUDGEMENT OF THE DIVISION BENCH

JUDGEMENT OF THE SUPREME COURT

BACKGROUND FACTS

ANALYSIS OF RELEVANT PROVISIONS & PRECEDENTS

(i) Applicability and scope of Section 17 of the Act.

(ii) Interplay between Section 5-A and Section 17-A of the Act.

(iii) Subjective satisfaction - Scope of judicial review.

(iv) Application to the facts of the case.

THE FUTURE COURSE AND THE RELIEF

FINAL DIRECTIONS

INTRODUCTION

1. The present batch of writ petitions, filed under Article 226 of the Constitution, seeks to question the validity of the notifications dated 16 October, 2004 under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act, 1894' or ‘the Act’), and dated 28 November, 2005 under Section 6 (1) of the Act, 1894 proposing to acquire 367-0-5 bighas (229.3828 acres) of land of Village Mohiddinpur Kanavani, Pargana Loni, District Ghaziabad for a public purpose, viz. 'construction of residential colony under planned development scheme' by the Ghaziabad Development Authority, Ghaziabad (hereinafter referred to as 'GDA'). While issuing the notification under Section 4 dated 16 October, 2004, the power conferred upon the State Government under Section 17(4) has been invoked, thereby dispensing with the enquiry contemplated under Section 5-A of the Act, 1894. Likewise, while issuing notification dated 28.11.2005 under Section 6 of the Act, 1894, the power under Section 17(1) of the Act, 1894 has been invoked, empowering the Collector to take possession of the acquired land after expiration of 15 days from the date of publication of notice under Section 9(1), though, no award under Section 11 has been made.

2. A Division Bench of this Court by judgment dated 09.09.2016 allowed first set of 30 writ petitions, leading one being Writ-C No.

4986 (Hatam Singh and others vs. State Of U.P. and another) and quashed the acquisition notifications dated 16 October 2004 and 28 November 2005 in respect of the land of the petitioners. Another set of four writ petitions was decided by judgment dated 30.09.2016 by the same Division Bench in terms of its previous judgement dated 09.09.2016 in the case of Hatam Singh and others Vs. State of U.P. and other connected matters. Ghaziabad Development Authority, Ghaziabad challenged the aforesaid judgements dated 09.09.2016 and 30.09.2016 of the Division Bench of this Court by filing 34 special leave petitions, out of which 33 were decided by the Supreme Court vide judgement dated 31.10.2017 (Civil Appeal No. 18273 of 2017: GDA Vs. Rattan Singh and other connected appeals), whereby, the matter was remitted for a fresh consideration by this Court. One remaining SLP No. 3426 of 2016 arising out of judgement of the Division Bench of this Court dated 09.09.2016 in leading Writ Petition No. 4986 of 2005 (Hatam Singh and others Vs. State of U.P. and another) came to be decided by judgement dated 08.10.2018 in terms of the previous judgement dated 31.10.2017 in Civil Appeal No. 18273 of 2017 and other connected matters and the case was remitted back to this Court on the same issues.

3. The Supreme Court has found that certain documents placed before it for the first time, which go to the root of the matter, require consideration by this Court. Accordingly, GDA has been permitted

to place on record before this Court the documents it sought to rely upon before the Supreme Court for the first time, and the petitioners have been permitted to file rejoinder affidavit in reply, with a direction to this Court to take into consideration the pleadings and documents, along with other material already on record, for deciding the following issues:

> (a) Whether, regional plan, sub-regional plan and master plan were approved by the competent authority under provisions of National Capital Region Planning Board Act. 1985 (in short NCRPB Act); and
>
> (b) Whether, inquiry under Section 5-A of Land Acquisition Act, 1894 was rightly dispensed with.

4. In pursuance of liberty granted by Supreme Court to the parties, they have filed various affidavits, and thereafter, the writ petitions were taken up for hearing.

5. Before we proceed to state the facts of the case, we consider it apposite to summarise the findings returned by the Division Bench in the judgement dated 09.09.2016, the grounds on which the matter has been remitted back, and the issues which have to be considered afresh, by this Court.

PREVIOUS JUDGEMENT OF THE DIVISION BENCH

6. The Division Bench in paragraph 35 of the judgement dated 09.09.2016, noted three issues raised by the writ-petitioners concerning the validity of the acquisition proceedings, as follows:-

> "35. The first issue relates to validity of acquisition of land at village Mohiuddinpur Kanawani at the instance of GDA. This question would be examined by considering the matter on following three angles:
>
> (a) Whether village Mohiuddinpur Kanawani part of Revenue District Gautambudh Nagar could have been acquired by GDA?
>
> (b) Whether revenue village Mohiuddinpur Kanawani continued to be part of 'Development Area' of GDA so as to authorise GDA to proceed for acquisition of land therein irrespective of fact as to under which Revenue District it falls ?
>
> (c) Whether the factum that revenue village, Mohiuddinpur Kanawani, was declared a village panchayat under U.P. Act, 1947, would make any difference or would have any legal consequence in acquisition proceedings initiated by GDA in respect of the same ?"

7. These issues were dealt with together. The relevant findings returned on the said issues by the Division Bench are extracted below:-

> "53. Moreover, notification issued under Section 3 of U.P. Act, 1973 bringing village Mohiuddinpur Kanawani within 'Development Area of Ghaziabad' has never been revoked and cancelled. In fact, after notification dated 18th May, 1978, under Sections 2(d) and 3 of U.P. Act, 1976, by virtue of Section 17, village Mohiuddinpur Kanawani was deemed to have been excluded from the application of U.P. Act, 1973 but when notification dated 18th May, 1978 stood superseded by notification dated 11.07.1989, and villlage Mohiuddinpur Kanawani was not included therein as part of NOIDA, the deeming provision under Section 17 disappeared, restoring earlier position that is reviving notification dated 9th March, 1977 issued under Section 3 of U.P. Act, 1973 and village, Mohiuddinpur Kanawani, continued to be a part of 'Ghaziabad Development Area' to be developed by GDA. Thus, we are clearly of the view that after issue of notification dated 11th July, 1989, village Mohiuddinpur Kanawani continued to be within territorial jurisdiction of GDA being part of 'Ghaziabad Development Area' by virtue of notification dated 9th March, 1977 which was never revoked or cancelled and restored its efficacy on and after notification dated 11th July, 1989.

> 56. ..... In our view, creation of Revenue District Gautambudh Nagar and bringing village Mohiuddinpur Kanawani within the revenue jurisdiction of Gautambudh Nagar would make no difference and village Mohiuddinpur Kanawani, as it was already declared separately as a part of 'Ghaziabad Development Area, would continue to have retained the same status so far as GDA is concerned.
>
> 57. Now comes the last submission about declaration of village Mohiuddinpur Kanawani as Gram Panchayat. Such a declaration is made under provisions of U.P. Panchayat Raj Act, 1947 (hereinafter referred to as U.P. Act, 1947). Such declaration is for the purpose of governance of Gram Panchayat in general by the provisions of U.P. Act, 1947, but there is nothing on record or contained in the said statute to show, if certain land or the entire area of a Gram Panchayat is declared as a part of a 'development area' in a notification under Section 3 of U.P. Act, 1973, it will be bad or would infringe U.P. Act, 1947 or that U.P. Act, 1947 would override U.P. Act, 1973. We have not been pointed out any provision under U.P. Act, 1947 which may show, if an area of Gram Panchayat is notified to be a part of 'development area' of Development Authority under U.P. Act, 1973, it would be inconsistent and in the teeth of functioning of Gram Panchayat under U.P. Act, 1947. The aforesaid submission, therefore, is also rejected."

8. The Division Bench thus decided all the aforenoted three issues against the petitioners and in favour of the respondents. Thereafter, the Division Bench proceeded to frame four other substantial issues with regard to the validity of acquisition notifications. The relevant paragraph-59 of the judgement wherein the issues have been framed, is extracted below:-

> "59. Now we come to other substantial issues with regard to validity of impugned acquisition notifications, i.e.:
>
> (i) Whether dispensation of inquiry under Section 5A of Act, 1894 is illegal, arbitrary and founded on no material to show existence of actual urgency?
>
> (ii) Whether permission or sanction of NCRPB is mandatory. If so, whether respondents have complied with the said requirement?

(iii) Whether the notification under section 6 is barred by time having been published beyond one year from the date of preliminary notification under Section 4?

(iv) Whether acquisition for "Planned Development" i.e. for construction of residential colonies, at the instance of GDA, is a colourble exercise of power, since acquired land mostly is being handed over and transferred to private builders?"

9. While deciding issue no. 1, the Division Bench held that the respondents took more than four years in issuing the notification under Section 6 of the Act, 1894 and thus, it was not a case of genuine and bona fide urgency justifying exercise of powers under Section 17(1) and (4) of the Act, 1894. It was held that the right to file objection against proposal of acquisition of land published under Section 4 of the Act, 1894 was a substantial right conferred by statute in favour of the petitioners and it could not have been taken away in the facts and circumstances of the present case.

10. While deciding issue no. 2, the Division Bench held that the 1985 Act was enacted on a subject from the State list on basis of resolutions passed by the legislatures of the State of Haryana, Rajasthan and Uttar Pradesh under Article 252 of the Constitution. The Division Bench found that as per Master Plan, 2001 the acquired land was reserved as a 'recreation site' and its usage was changed to 'residential' without obtaining approval from the National Capital Region Planning Board (hereinafter referred to as 'NCRPB').

11. It was also held that although, under the Act, 1894 sub-regional plan required approval of the NCRPB but there was no clear cut pleading in any of the affidavits filed by GDA that the same was got approved from NCRPB. Consequently, the acquisition of land for residential purpose was not found to be in conformity with the requirement of the Act, 1985.

12. On issue no. 3, as to whether declaration under Section 6 of the Act, 1894 was beyond the period of one year stipulated under the second proviso to sub-section (1) of Section 6 of the Act 1894, it was held that limitation period when counted from the date of publication of the corrigendums in the official gazettes dated 18.02.2005 and 02.08.2005 was well within one year and therefore, not barred by limitation. Additionally, it has also been held that an interim order was passed in leading writ petition on 22 October 2005 and the period thereafter, would have to be excluded while counting the limitation and in view thereof, also, the notification under Section 6 of the Act 1894 was within limitation.

13. Issue no. 4 as to whether the impugned notifications were a result of colourable exercise of power was decided against the petitioners in view of lack of specific pleadings and material to substantiate the same.

14. Additionally, in paragraphs 113 and 114 of the judgment, the plea relating to infraction of Section 11A of the Act, 1894 was also repelled with the following finding:

> "113. Lastly, it is argued that award has been made after two years and, therefore, acquisition stands lapsed under Section 11A of Act, 1894. It is not in dispute that in most of writ petitions interim orders have been passed. In leading writ petition itself interim order was passed on 22nd October, 2005.
>
> 114. Explanation of Section 11A clearly provides that in computing two years period, during which any action or proceeding to be taken in pursuance of declaration is stayed by Court of law shall be excluded. In view thereof, it cannot be said that acquisition in question can be claimed by petitioners to have lapsed for non-compliance of Section 11A, therefore, this argument is rejected."

15. The concluding part of the judgment of the Division Bench dated 09.09.2016 is extracted below for sake of convenience:

> "115. In the result and in view of our findings dispensation of inquiry under Section 5A by exercising power under Sections 17(1) and (4) was arbitrary and illegal and also there was no compliance of provision of National Capital Region Planning Board Act, 1985 at any stage, impugned acquisition notifications cannot be sustained. Had there been deficiency only with regard to illegal dispensation of inquiry under Section 5A, we could have set aside only final declaration notification issued under Section 6 and permitted respondents to proceed from stage of inviting objection from petitioner tenure holders but since mandatory provisions of Act, 1985 has also not been complied with, in impugned acquisition proceedings, we find no other way but to quash both the acquisition notifications issued under Sections 4 and 6 in respect of land belonging to petitioners in all writ petitions.
>
> 116. We are confining relief in these writ petitions to petitioners only in view of law laid down in Mahavir Sahkari Avas Samiti Ltd. (supra), wherein Court said in paragraph 15, said as under;
>
> 15. There is no dispute to the settled legal proposition that in case the acquisition proceedings are quashed by the Court, it will cover the land of only those persons who had approached

the Court by filing the petitions and it would not annul the proceedings in respect of those persons who had not approached the Court.

117. Writ petitions are allowed. Impugned acquisition notifications dated 16th October, 2004 and 28th November, 2005 in so far as they relate to the petitioners' land are hereby set aside. Petitioners shall be entitled to cost which we quantify to Rs.5000/- for each set of writ petition against respondents 1, 2 and 3."

JUDGEMENT OF THE SUPREME COURT

16. As noted above, before the Supreme Court, the GDA filed additional material and contended that the regional plan was prepared way-back in 1989, and the same had been duly approved by NCRPB under the 1985 Act. The Sub-Regional plan was required to be prepared by the participating States and not by the GDA. It was only required to prepare master plan, and that it did not require approval of the Board under the 1985 Act. The State of U.P., being a participating State, had duly prepared the Sub-Regional plan, and it had due approval from NCRPB. In the Regional Plan as well as Sub-Regional Plan, the use of land - whether for 'recreation' or 'residential' - was primarily in relation to urbanization. Thus, the finding of the Division Bench of this Court in relation to violation of provisions of the Act 1985 was not correct. It was also contended that there was some defect in the name of the district mentioned in the notifications, and it took some time to make necessary corrections to rectify the same. However, this could not defeat the

urgency, which was otherwise there in view of the fact that the land was required for planned development, a public purpose.

17. The Supreme Court deemed it appropriate to permit the GDA to place on record before this Court the entire material in relation to sanctions granted by NCRPB and other relevant aspects. The petitioners were also granted opportunity to file rejoinder affidavit, and the matter was required to be reconsidered by this Court on the aspect relating to the alleged non-compliance with the provisions of the 1985 Act and whether dispensation of enquiry under Section 5-A of the Act was valid. The relevant part of the judgment of Supreme Court dated 31.10.2017 is extracted below:

> "After hearing learned counsel for the parties, in our opinion, it would be just and appropriate to permit the Ghaziabad Development Authority to place on record, the notifications, as well as the Regional Plan, the Sub-Regional Plan and also sanctions granted by the Board, as also the Master Plan, along with proper pleadings and affidavit. The land owners be permitted to file a rejoinder affidavit and thereafter, the matter be heard afresh and decided on aforesaid aspects. The observation made by the High Court, that Sub-regional Plan was not prepared by the Ghaziabad Development Authority, is not in accordance with law. Sub-Regional Plan is required to be prepared by participating States. The Master Plan only was to be prepared by the Ghaziabad Development Authority and that did not require approval of Board under 1985 Act. All these aspects are required to be taken care of by the High Court in proper perspective. The decision of the High Court, for want of proper pleadings, as to non compliance of 1985 Act, is found to be untenable. Both the appellants as well as the respondent have not pleaded, with exhaustive details, the actual factual situation that has been urged before us for the first time.
>
> The other objection raised is with respect to the finding as to the non-holding of an inquiry under Section 5A of the Act is also required to be gone into afresh. After duly considering the submissions of the rival parties."

18. It is noteworthy that the petitioners did not challenge the findings of the Division Bench in its judgment dated 09.09.2016 on various issues decided against them by filing any separate appeal or cross objections. The Supreme Court has not set aside the entire judgement of the Division Bench. Thus, the findings of the Division Bench on the issues decided against the petitioners have attained finality.

19. Albeit, one of the issues remitted by the Supreme Court was regarding alleged non-compliance of the provisions of the 1985 Act, but at the stage of final hearing, learned counsel for the petitioners unequivocally stated that after going through the documents brought on record before this Court by GDA on the said aspect, they are not pressing the plea. Thus, counsel for the petitioners limited the challenge to acquisition notifications only to the other aspect viz., wrongful invocation of urgency provisions under Section 17(1) and (4) of the Act 1894 and dispensation of enquiry under Section 5-A of the Act, 1894.

20. Before we proceed to take note of the submissions advanced by learned counsel for the petitioners on the aspect relating to wrongful invocation of urgency provisions, we deliniete the factual background of the present case.

21. The Division Bench in its judgment dated 09.09.2016 noted facts from the Writ-C No. 4986 of 2005 (Hatam Singh and others vs. State of U.P. and another), treating the same to be leading petition.

22. For sake of convenience and to ensure consistency, we also proceed to treat the said petition as leading case and note the facts pleaded by the parties in the said case for purposes of discussion and analysis. However, wherever required, we would also refer to pleadings from the other petitions.

BACKGROUND FACTS

23. The respective plots of the petitioners, which are subject matter of the acquisition proceedings in the present batch of petitions, have been summarized by the Division Bench in paragraph-2 of the judgment. Relevant part of the same is extracted below:

Sl. No.	Writ Petition	Petitioners' name	Details of Kharsa/Gata no.	Area (in bigha/ hectare/ sq yd)
1.	4986 of 2005	1. Hatam Singh 2. Jagat Singh 3. Khajan Singh 4. Deepak Singh 5. Devendra Singh 6. Shakuntala Devi	256/2 299 381 457/1 450	1-1-5 (3214.06 sq yd) 2-0-0 (6050 sq yd) 1-17-0 (5596.25 sq yd) 0-10-0 (1512.05 sq yd) 1-0-0 (3025 sq yd)
3.	39171 of 2005 M/S Shri Nemi Nath Foundation	M/S Shri Nemi Nath Foundation	278 279	1-4-7 (3/5th share (3682.934 sq

				yd) 0-10-0 (1512.5 sq yd)
4	76749 of 2005	1. Sri Dharam Singh 2. Sri Karan Singh 3. Smt. Mayawati 4. Smt. Kisan Dai 5. Sri Bool Chand 6. Sri Chatar Singh 7. Sri Kabool Singh 8. Sri Kishan Lal 9. Sri Layak Ram 10. Sri Dheeraj Singh 11. Sri Deep Chand 12. Sri Mahendra Singh 13. Sri Ravinder Kumar 14. Sri Surinder Kumar 15. Smt. Raj Kali 16. Sri Sukhbir Singh 17. Sri Tej Singh 18. Sri Khajan Singh 19. Smt. Harkali 20. Sri Suraj Singh 21. Sri Chander Singh 22. Sri Bed Ram 23. Sri Prem Raj 24. Sri Jabar Singh 25. Sri Nawal Singh 26. Sri Kanwar Singh. 27. Sri Bhanwar Singh 28. Sri Vir Singh	454 455 463 303 304 289 291 437 438 495 491 453 452 451M 454M 501 259 510 514 515 454M 455M 440	300 sq. yard 1-6-0 (3932.5 sq yd) 0-18-0 (2722.5 sq yd) 1-10-0 (4537.5 sq yd) 0-13-0 (1966.25 sq yd) 2-8-0 (7260 sq yd) 1-1-0 (3176.25 sq yd) 0-8-0 (1210 sq yd) 0-16-0 (2420 sq yd) 0-17-0 (2571.2 sq yd) 0-12-0 (1815 sq yd) 1-2-0 (3327.5 sq yd) 0-11.5-0 (1739.375 sq yd) 1-10-5 (4775.31 sq yd) 0-8-0 (1210 sq yd) 0-6-0 (907.5 sq yd) 1-0-0 (3025 sq yd) 0-17-0 2571.25 sq yd) 1-10-0 4537.5 sq yd) 0-2-15 (415.93 sq yd) 0-15-10 (9830 sq yd) 2-3-10 (6589.37 sq yd)
5.	76751 of 2005	1.Pushpendra Kumar Singh 2. Dharmendra Kumar Singh 3. Jitendra Kumar Singh	407	250 sq. yards
6.	77647 of 2005	1. Anoop Singh 2. Khem Chand 3.Udai Singh 4. Bhagwat Singh	511 456	0-17-0 (2571.25 sq yd) 0-15-5 (2382.18 sq yd)

		5.Smt. Shanti Devi 6. Rajender Singh 7. Fateh Singh	257 516	0-15-0 (2268.75 sq yd) 0-16-0 (1/3rd (2420 sq yd)
7.	77668 of 2005	Smt. Devki Singh	380 382	3-6 1/4-0 (19057.5 sq yd) 1-6-0 (3932.5 sq yd)
8.	77670 of 2005	1. S.M. Chopra 2. Kiran Chopra	300 383	1-12-0 (4840 sq yd) 1-12-0 (4840 sq yd)
9.	77902 of 2005	1. Raj Singh 2. Babu Lal	395	0-17-0 (2571.25 sq yd)
10.	78873 of 2005	1. Rita Devi 2. Brij Kishore 3. Ram Singh 4. Moti Pandit 5. Abdul Wahid 6. Indu Devi 7. Ganga Prasad 8. Devi Das 9. Sanjay Kumar Chorisya 10. Veer Singh 11. Umesh Kumar 12. Parmila Devi 13. Brij Lal Verma 14. Vinod Kumar Pandey 15. Sharmila Thakur 16. Ishwar Dayal 17. Vishnu Kumar Sharma 18. Desh Raj 19. Pushpa Devi 20. Kalpana Upadhya 21. Shahnaj 22. Nakul Thakur 23. Kavita 24. Rakesh Kumar 25. Rupa Devi 26. Satish Pandit 27. Pradeep Kumar Thakur 28. Laxman 29. Smt. Asha Devi 30. Raj Kumar 31. Amina Khatoon 32. Saroj Sanju 33. Kripal Singh 34. Shiv Shankar Tiwari 35. Dinesh Kumar Yadav	482 483 226/5	226/5 6-13-0 (20116.25 sq yd) 0-3-10 (1966.25 sq yd) 10-0-12 (30340.744sq yd)

		36. Rameshwar Shah 37. Kuldeep Kumar 38. Munim 39. Ram Vilash 40. Subhan 41. Pratap Singh 42. Suresh Yadav 43. Bindeshwari Prasad 44. Ram Pal 45. Mool Chand 46. Salleddin Ansari 47. Surendra Gupta 48. Manohar Lal 49. Ranesh Kumar 50. Mantoon Mahto 51. Rachna Devi 52. Sonia 53. Sunil 54. Veer Singh 55. Bhupendra 56. Vinod Sharma 57. Vishnu Dev Mahto 58. Golik Kumar Mohanti 59. Karan Singh 60. Rajesh Thakur 61. Om Prakash Thakur 62. Ram Ashrey 63. Ashok Kumar 64. Ramesh Devi 65. Ram Dev Sharma 66. Raj Kumari 67. Shiv Prasad Singh 68. Omi 69. Anita 70. Rajesh Singh 71. Anju Sharma 72. Sarju Prashad 73. Leelawati 74. Mamta Devi 75. Maya Devi 76. Nand Kishore 77. Munni Lal 78. Radhe Shyam 79. Radhe Shyam 80. Anuj Gautam 81. Laxmi Devi 82. Rajesh Kumar Chaoudhary 83. Munnu Singh 84. Mansori Rai 85. Asha Devi Srivastava 86. Rattan Singh Pal 87. Prayag 88. Prem Singh Bist 89. Anil Kumar Mahto 90. Shiv Mohan Yadav 91. Jagdish Mahto 92. Raj Dulari 93. Manju Devi 94. Madhulika Singh		

		95. Champa Devi 96. Jyatri Devi 97. Badri Prashad 98. Ram Kewal 99. Chanchal Dhiman 100.Ravinder Nath 101.Guddu Verma 102.Ravi Shankar Mishra		
11.	363 of 2006	1. Sri Ratan Singh 2. Sri Dayanand 3. Sri Brahmanand 4. Sri Likhi Ram 5. Jagdish Prasad 6. Sri Mithan Singh 7. Sri Braham Singh 8. Sri Rajbeer Singh 9. Sri Jai Ram 10. Sri Jai Pal Singh 11. Sri Kishan 12. Sri Beer Singh 13. Sri Bhim Raj 14. Sri Suraj Singh 15. Sri Ajab Singh 16. Sri Mahendra Singh 17. Sri Jagmal 18. Sri Dharam Singh 19. Sri Mahendra Singh 20. Sri Sattan Singh 21. Sri Mani Ram 22. Sri Des Raj 23. Sri Ant Raj 24. Sri Ram Prakash 25. Sri Brij Pal 26. Sri Satveer 27. Sri Kavinder 28. Sri Narender 29. Sri Indra Raj 30. Sri Ishwar 31. Sri Naresh 32. Sri Dharmender 33. Smt. Jagwati 34. Sri Jabar Singh 35. Sri Nawal Singh 36. Sri Kanwar Singh 37. Sri Bhawarn Singh 38. Sri Beer Singh 39. Sri Mahesh 40. Sri Raj Kumar 41. Sri Manoj 42. Sri Vinod Kumar 43. Sri Tek Chand 44. Sri Sant Ram 45.Sri Hansa Ram 46. Sri Kara Singh 47. Sri Budh Ram 48. Sri Jai Pal 49. Sri Rampat Singh 50. Ratan Singh 51. Sri Braham Singh	240 411 413 517 497 454 494 & 495 447, 448, 449 502 488 419 504 440 419 504 420 440 419 504 420 440 441 494 & 495 441 285	0-4-0 (605sq yd) 1-5-0 (3781.25sq yd) 0-7-0 (1058.75sq yd) 1-0-0 (3025sq yd) 1-4-0 (3630sq yd) 1-4-0 (3630sq yd) 855 sq yard 4-9-0 (13461.25sq yd) 0-6-0 (907.5sq yd) 1-0-0 (3025sq yd) 1-15-0 (5293.75sq yd) 0-18-0 (2722.5sq yd) 3-14-2 (11207.624sq yd) 1-15-0 (5293.75sq yd) 0-18-0 (2722.5sq yd) 1-15-0 (5293.75sq yd) 0-18-0 (2722.5sq yd) 0-8-0 (1210sq yd) 3-14-2 (11207.624sq yd) 1-15-0 (5293.75sq yd) 0-18-0 (2722.5sq yd) 0-8-0 (1210sq yd) 3-14-2 (11207.624sq yd) 2-5-0 (6806.25sq yd)

		52. Sri Jatan Singh 53. Sri Jagdish Singh 54. Sri Prem Singh 55. Sri Dharam Singh 56. Sri Charan Singh 57. Sri Bhagat Singh 58. Sri Chaman Singh 59. Sri Jagat Singh 60. Sri Desh Raj Singh 61. Sri Velu 62. Sri Satish 63. Sri Sita Ram 64. Sri Shree Pal 65. Sri Satender 66. Smt. Kanika Saraswat 67. Deewan Chand 68. Smt. Suresh 69. Sri Misri Lal 70. Sri Pyare Lal 71. Sri Om Beer 72. Smt. Biro Devi 73. Sri Bablu 74. Sri Narender 75. Sri Kavinder 76. Smt. Ram Kali 77. Sri Charan Singh 78. Sri Bhule Ram	487 539 516 488 418 458	0-8-7 (1262.934sq yd) 2-5-0 (6806.25sq yd) 0-14-0 (2117.5sq yd) 2-6-0 (6957.50sq yd) 1-6-0 (3932.5sq yd) 2400 sq yard 2-0-0 (6050sq yd) 1-0-0 (3025 sq yd) 0-12-0 (1815sq yd)
12.	1622 of 2006	1.Madhuban Sahkari Awas Samiti Ltd. 2. Anuradha 3. Smt. Mina Devi	315 348 347 349 350 351 310 344 345	0-11-0 (1663.75sq yd) 0-19-0 (2873.75sq yd) 0.5310 (6350.71sq yd) 0.2910 (3480.33sq yd) 0.2780 (3324.85sq yd) 0.6070 (7259.6sq yd) 0.3160 (3779.33sq yd) 0.1520 (1817.90sq yd) 0.3160 (3279.33sq yd)
13.	5495 of 2006	1. Dhan Pal 2. Ram Pal 3. Sardar Singh 4. Munshi 5. Ram Kishan 6.. Pappu 7. Raje 8. Raj Pal 9. Mannu 10. Jagga 11. Smt. Sona Devi	237 406 432/2	0.291 (3480.33sq yd) 0-13-0 (1966.25sq yd) 0.253 (3025.85sq yd)
14.	5503 of 2006	1. Gaggan Deep Gandhi 2. Param Jeet Ghandhi	156 157	0.0380 h (454.48sq yd) 0.3670 h

			279 169	(4389.28sq yd) 0.2400 (2870.38sq yd) 0.1640 (1961.42sq yd)
15.	5505 of 2006	1. Anita Babbar 2. Rajani Babbar 3. Ashok Sachdeva	280 284 285	0-14-0 (2117.5sq yd) 1-1-19 (3319.928sq yd) 1-8-1 (4242.562sq yd)
16.	52592 of 2006	1. S.B.H. Sahkari Avas Samiti Limited 2. Dr. R.P. Singh	276	0-17-0 (2571.25sq yd)
17.	56295 of 2006	Jagat Singh	298 306	1400.125 sq yard 1663.75 sq yard
18.	56588 of 2006	1. Daya Nand Sharma 2. Brahma Nand Sharma 3. Lakhi Ram Sharma 4. Jagdish Sharma 5. Ram Chandra 6. Raj Veer Singh 7. Bhram Singh 8. Sri Chand 9. Kailash Chand 10.Janduva 11.Vijay Pal 12.Bheem Raj 13.Dilva 14.Suraj Singh 15.Chander Singh 16.Palm Ram Singh 17.Ved Ram Singh 18.Ramey Chand 19.Prem Singh 20 Rajesh Kumar Singhal	412 415/2M 392 393 414 409M 413M 416/2 409M 410 415M 417 229 400 439 523 524 447 449 448	0.0510 (609.95sq yd) 0.5190 (6207.18sq yd) 0.4430 (5298.24sq yd) 0.3290 (3934.81sq yd) 0.3410 (4078.32 sq yd) 11-4-15 (33993.43sq yd) 1-10-0 (4537.5sq yd) 0-15-2 (2283.874sq yd) 0.0160 (1913.58sq yd) 0.1640 (1961.42sq yd) 0.0130 (155.47sq yd) 0.2280 (2726.85sq yd) 1-3-0 (3478.75sq yd) 0-18-0 (2722.5sq yd) 2-16-0 (8470sq yd) (1-6-0)/2 3932.5sq yd) (1-6-0)/2 (3932.5sq yd) (0-13-0)/2 (1966.25sq yd) (2-9-0)/2

			490 522 482 165 239 259	(7411sq yd) 1-6-0 (3932.5sq yd) 1-5-0 (3781.25sq yd) 0-14-0/2 (2117.5sq yd) 0-3-0 (453.75sq yd) 1-14-3 (5165.186sq yd) 1-3-0 (3478.75sq yd) 0-6-0 (907.5sq yd)
19.	47797 of 2009	Shri Anil Kumar Jain	149 151	0.1260 (1506.95sq yd) 0.0130 (155.48sq yd)
20.	47339 of 2010	1. Ram Veer 2. Bhopal Singh 3. Mahesh Chand 4. Suresh Chand 5. Sanjay 6. Suresh Singh 7. Ratani 8. Hem Chand 9. Sukhpal 10. Kesh Ram 11. Sripal 12. Prem Singh 13. Zila Singh 14. Kishon Devi 15. Kheemraj 16. Khairati 17. Ratan Singh 18. Heera Lal 19. Tulsi Ram 20. Fateh Singh 21. Jagan 22. Parmal 23. Satish 24. Prem Singh 25. Brahm Prakash 26. Brijesh 27. Neeraj 28. Praveen 29. Pramod 30. Lala	249	0.5690 (6805.18 sq yd)
21.	4566 of 2011	Bhuley Ram	389 390	160 mtr 2120 mtr
22.	36270 of 2011	M/S S.V. Liquor (India) Ltd.	406	0.8290 h (9914.75sq yd)
23.	2476 of 2012	Balwant Rai Kathuria	300 302	0-2-0 (302.5 sq yd) 1-5-0 (3781.25 sq yd))

24.	28223 of 2012	Amarjeet Kaur Gandhi	290	0-14-0 (2117.5 sq yd)
25.	37492 of 2012	1. Shyam Lal 2. Ram Kishan 3. Babu Ram 4. Dharam Veer 5. Chatar Singh 6. Bhoop Singh @ Pappu 7. Karan Singh 8. Smt. Leelawati 9. Gyano 10. Anoj 11. Kailash 12. Bhram Singh 13. Rampat 14. Jatan Singh 15. Ratan Singh 16. Jagdish 17. Prem Singh 18. Dharam Singh 19. Dhanpal 20. Rampal 21. Sardar Singh 22. Munshi 23. Bheem Singh 24. Bheem Saran 25. Maharaj Singh 26. Hem Chand @ Kalwa 27. Sukh Lal	237M 195 & 196 183 187 188 389 390 202 436 201 435 167 168 262 265 267 269 270 272 273 275 167 168 262 265 267 269 270 272 273	.2446 h (2925.39sq yd) .0418 h (499.92sq yd) .0890/2 h (1064.43sq yd) .2530/2 h (3025.85sq yd) .1900/2 h (2272.38sq yd) .0160 (191.35sq yd) .2220 (2655 sq yd) .2660 (3181.33 sq yd) .2280 (2726.86 sq yd) .4170 (4987.28 sq yd) .3410 (4078.33 sq yd) .1260/2 (1506.95 sq yd) .1260/2 (1506.95 sq yd) .2400/2 (2870.38 sq yd) .3540/2 (4233.80 sq yd) .0510/2 (609.95 sq yd) .1770/2 (2116.90 sq yd) .1770/2 (2116.90 sq yd) .2910/2 (3480.33 sq yd) .1530/2 (1829.86 sq yd) .2660/2 (3181.33 sq yd) .1260/2 (1506.95 sq yd) .1260/2 (1506.95 sq yd) .2400/2 (2870.38 sq yd) .3540/2 (4233.80 sq yd) .0510/2 (609.95 sq yd) .1770/2 (2116.90 sq yd) .1770/2 (2116.90 sq yd) .2910/2 (3480.33 sq yd) .1530/2 (1829.86 sq yd)

			275 230	.2660/2 (3181.33sq yd) .3290 (3934.81sq yd)
26.	16390 of 2013	1. Surendra Singh 2. Devendra Singh 3. Vijendra Singh 4. Sanjay 5. Smt. Bala Devi	255 261	1-13-0 (4991.25 sq yd) 2-3-0 (6503.75 sq yd)
27.	17162 of 2013	1. Smt Vimlelsh Bansal 2. Ankit Nagar 3. Anuj Nagar 4. Mahipal Singh 5. Surendra Pal Singh	285	25568.14 sq. mtr
28.	21562 of 2013	1. Sunil Sachdev 2. Harish Sachdev 3. Janak Sachdev 4. Naresh Chand 5. Jadish 6. Sitaram 7. Sripal 8. Satendra 9. Achaya 10. Smt. Rajrani 11. Sanjay Singh 12. Meghraj 13. Smt. Krishna Devi 14. Rajpal 15. Veerpal 16. Ranveer 17. Manveer 18. Mahipal	159 164 183 187M 188 195 196M 197	1-11-0 (1663.75 sq yd) 1-11-10 (1739.37 sq yd) 0-7-0 (1058.75 sq yd) 0-13-0 (1966.25 sq yd) 0-15-0 (2268.75 sq yd) 0-18-0 (2722.5 sq yd) 0-19-0 (2873.75 sq yd) 0-7-0 (1058.75 sq yd)
29.	21565 of 2013	1. Ratan Singh 2. Heera Lal 3. Tulsiram 4. Fateh Singh 5. Jagan 6. Parmal 7. Dayachand 8. Harbeer 9. Smt. Jagwati 10. Susrendra Singh 11. Devendra Singh 12. Vijendra Singh 13. Sanjay 14. Smt. Bala Devi 15. Sukhbir Singh Gusiya 16. Manjeet Singh Gusiya	161 274	459M 0-8-0 (1210 sq yd) 1-5-0 (3781.25) 0-9-0 (1361.25 sq yd)
30.	35161 of 2014	1. Desh Raj 2. Ant Raj 3. Braj Pal 4. Satyabir 5. Hansa Ram 7. Karan Singh	296	

24. The facts relevant for deciding the issues have been noted by the Division Bench from the original record pertaining to the acquisition in question. The parties have admitted before us that the facts noted in paragraph 60 of the judgement of Division Bench are not in dispute. We, therefore, borrow the relevant part :

"(a) GDA vide resolution dated 29.06.2001, resolved to acquire 400 acres of land at village, Mohiuddinpur Kanawani, and constituted a Committee to select appropriate land. Meeting of Committee was held for the first time on 7th January, 2002. 'Site Selection Committee' visited village Mohiuddinpur Kanawani on 10.01.2002. It found that land selected by it, besides individual tenure holders, was also registered in the name of Societies, Farm Houses; some land belong to Gram Samaj and some part of land on which constructions existed was, where, maps were already sanctioned but for non deposit of development fee, sanctions granted stood lapsed. Details of selected land as mentioned by Site Selection Committee in its report, read as under :

1. काश्तकारो की भूमिः–	327–12–4–17 बीघा
2. वह भूमि जिस पर समितियो के नाम दर्ज हैः	97–19–12–0 बीघा
3. वह भूमि जिस पर फार्म हाउस दर्ज हैः–	49–3–19–0 बीघा
4. ग्राम समाज की भूमिः–	32–18–12–18 बीघा
5. मानचित्र अस्वीकृत होने के उपरान्त सूची में सम्मिलित भूमिः–	96–7–5–10 बीघा 604–7–14–6 बीघा

1.Land of the cultivators	327-12-4-17 Bigha
2.Land registered in the name of Societies	97-19-12-0 Bigha
3.Land registered in the name of Farm House	49-3-19-0 Bigha
4.Land of Gram Samaj	32-18-12-18 Bigha
5.Land included in the list after disapproval of the map	96-7-5-10 Bigha 604-7-14-6 Bigha

(English translation by Court)

(b) Site Selection Committee also mentioned in its report that proposed land, as per 'Master Plan, 2001', was a recreation site, and therefore, conversion of land use as residential would also be necessary.

(c) Report was considered by GDA in its meeting dated 07.06.2002 and it resolved to proceed to acquire land belong to Individual Tenure Holders, Societies, Gram Samaj and Farm Houses.

(d) GDA sent a letter dated 14.01.2003 to Collector, Ghaziabad.

(e) GDA submitted application dated 17th May, 2003, requesting Collector to proceed for acquisition of 229. 3828 acres of land in village Mohiuddinpur Kanawani; regarding possession, whether immediately required or not, it mentioned in said application as under:

> *"Immediately. Because this scheme is to be completed for public interest and for "planned development" of the city."*

(f) GDA also deposited Rs. 2,54,97,000/- vide Cheque no. 951945 dated 01.07.2003, payable at Vijay Bank, Ghaziabad, in Treasury, vide receipt dated 11th July, 2003.

(g) ADM(LA) vide letter dated 28.08.2003 enquired from Ceiling Authority whether proposed land is within the ambit of Ceiling Act or not. A clearance certificate was issued by Competent Authority in the office of Collector, Gautambudh Nagar, on 08.12.2003.

(h) On the directions of Collector, Tahshildar Dadri, Gautambudh Nagar also submitted report on 10.12.2003.

(i) Collector, Gautambudh Nagar also issued 'No Objection Certificate' and for recommending dispensation of inquiry under Section 5A by exercising power under Section 17, mentioned following reason:

''गाजियाबाद विकास प्राधिकरण की यह एक अत्यन्त महत्वपूर्ण योजना है जिसमें भूमि की तत्काल आवश्यकता है परियोजना व क्षेत्र के सुनियोजित विकास के महत्व को दृष्टिगत रखते हुए इस भू–अर्जन प्रकरण में अर्जन की कार्यवाही भूमि अर्जन अधिनियम की धारा 4 व 6 के साथ पठित धारा 17 के अन्तर्गत करने हेतु संस्तुति की जाती है।''

"This is a very important scheme of the Ghaziabad Development Authority, in which the land is required urgently. Keeping in view the project and the importance of planned development of the area, proceedings for acquisition of land, in this land acquisition case, are recommended to be taken u/s 4 and 6 of Land Acquisition Act read with Section 17."

(English translation by Court)

(j) Requisite certificate under paragraph 14 schedule 2 of Land Acquisition Manual, 1988 was issued by ADM(LA) and Collector Ghaziabad on 16th March, 2004.

(k) Proposal for acquisition of land was submitted by Collector, Ghaziabad vide letter dated 27th May, 2004 to Director, Land Acquisition, Lucknow (hereinafter referred to as 'DLA').

(l) There were certain errors which 'DLA' got rectified and thereafter vide letter dated 26.06.2004, it requested Government i.e. Secretary, Housing and Urban Planning, Lucknow to proceed for issue of notification under Sections 4(1) and 17 of Act, 1894.

(m) Notification under Sections 4(1)/17 was published in the Gazette (Extraordinary) dated 16.10.2004.

(n) Noting on File No.14782/PSMM/05 of State Government starts with page 1 containing a note dated 25.06.2004/30.06.2004 which is in reference to DLA's letter dated 26.06.2004 and justification mentioned in the said note for dispensation of inquiry under Section 5A is contained in paragraph 13 of the said note which reads as under:

> ''13– प्रस्तावित भूमि का अर्जन की योजना में विलम्ब होने पर अनधिकृत निर्माण की संभावना है। प्रश्नगत योजना जनहित की है। अतः अर्जन हेतु भूमि अध्याप्ति 1894 की धारा–4 व 6 की विज्ञप्ति जारी कराने के लिए धारा–17 के प्राविधान लागू किया जाना आवश्यक है।''
>
> "13. There is likelihood of construction of unauthorised constructions in case of delay in acquisition of the proposed land. The scheme in question is for public welfare. Hence, in order to get notification for acquisition of land, issued, u/s 4 and 6 of the Land Acquisition Act, 1894, it is necessary to invoke provisions of Section 17."
>
> (English translation by Court)

(o) In the aforesaid notification, Revenue District was mentioned as Ghaziabad. Total land proposed to be acquired mentioned in the aforesaid notification was 367-0-5 bigha (229.3828) acres.

(p) Subsequently, it came to notice that certain Khasra numbers and area of land were wrongly mentioned in preliminary acquisition notification, hence a corrigendum was issued on 05.01.2005, published in the Gazette (Extraordinary) dated 05.01.2005 making following corrigendum:

1. खसरा संख्या 352 एम 0 में अर्जित क्षेत्रफल 2.19.0 के स्थान पर 2.19.10 पढ़ा जाए
2. खसरा संख्या 406 एम 0 में अर्जित क्षेत्रफल 3.5.18 के स्थान पर 3.5.16 पढ़ा जाए
3. खसरा संख्या 522 में अर्जित क्षेत्रफल 1.14.0 के स्थान पर 0.14.0 पढ़ा जाए
4. खसरा संख्या 153 में अर्जित क्षेत्रफल 0.9.0 के स्थान पर 0.14.0 पढ़ा जाए
5. कुल योग 229.3828 एकड़ के स्थान पर 229.5390 एकड़ पढ़ा जाए

1. 2-19-10 be read in place of the acquired area 2-19-0 in Khasra No. 352 M.
2. 3-5-16 be read in place of the acquired area 3-5-18 in Khasra No. 406 M.
3. 0-14-0 be read in place of the acquired area 1-14-0 in Khasra No. 552 M.
4. 0-14-0 be read in place of the acquired area 0-9-0 in Khasra No. 153 M.
5. 229.5390 acres be read in place of grand total of 229.3828 acres.

(English translation by Court)

(q) It was also published in two daily newspapers 'Amar Ujala' and 'Dainik Jagran' on 22nd October, 2004.

(r) ADM(LA) sent a letter dated 23rd September, 2005 requesting Government to issue another corrigendum so as to mention District "Gautambudh Nagar" instead of "Ghaziabad" in the notification dated 16.10.2004.

(s) Consequential corrigendum notification was issued on 28th September, 2005.

(t) Notification under Section 6(1) was published in the Gazette (Extraordinary) dated 28th November, 2005."

ANALYSIS OF THE RELEVANT PROVISIONS & PRECEDENTS :

25. The Act 1894 is an expropriatory legislation. It recognizes the power of eminent domain of the State. Thus, while it confers power to the appropriate Government to acquire land of private individuals, it also provides for certain safeguards to protect the interest of the affected persons. The acquisition under the Act could only be for a public purpose or for a company. Section 5-A of the Act confers right in any person interested in any land which is sought to be acquired for any public purpose or for a company to object to the acquisition of the land by filing objections. A wholesome procedure is provided under Section 5-A(2) of the Act laying down the manner in which objection is to be filed, heard and decided. The final declaration for acquisition of land under Section 6 of the Act, 1894 could be made only 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. The Government can take possession of the acquired land only after an award has been made under Section 11 of the Act.

26. Section 17 is an exception to the normal procedure of acquisition of land. It dispenses with the requirement of holding enquiry under Section 5-A of the Act. It applies only to cases where the land is (i) urgently needed for a public purpose or (ii) owing to any sudden change in the channel of any navigable river or other unforeseen emergency, immediate possession is needed.

27. In order to understand the scope of Section 17 of the Act, it would be necessary to first take into account the nature of enquiry and the right conferred in favour of the affected person by virtue of Section 5-A of the Act. In **Nandeshwar Prasad vs. U.P. Government**[1], the Supreme Court held that – "*the right to file objection under Section 5-A is a substantial right when a person's property is being threatened with acquisition and we cannot accept that right can be taken away as if by a side wind*".

28. In **Munshi Singh and others vs. Union of India**[2], a three Judge bench of the Supreme Court, noted the statutory embodiment of the *audi alteram partem* rule in Section 5-A and said:

> "Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. ..... The legislature has, therefore, made complete provisions for the persons

1 AIR 1964 SC 1217
2 (1973) S SCC 337

> interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A".
>
> (emphasis supplied)

29. In **State of Punjab vs. Gurnail Singh and others**[3]**,** it was held that compulsory taking of a man's property is a serious matter and smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness. Denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does 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 enquiry under Section 17 of Act, 1894. A slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes travesty of emergency power.

30. In **Om Prakash vs. State of U.P.**[4], the Apex Court observed that:

> "Inquiry under Section 5-A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of Constitution though right to property is no longer remained a fundament right, at least, observation regarding Article 14 vis-a-vis Section 5-A would remain apposite".

31. In **Union of India and Others vs. Mukesh Hans**[5], the Supreme Court held that -

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3 1980 (1) SCC 471
4 (1998) 6 SCC 1
5 (2004) 8 SCC 14

> "36. ....Right of representation and hearing contemplated under Section 5-A of the Act is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made. Therefore, in our opinion, if the appropriate Government decides to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5-A."

32. In **Hindustan Petroleum Corporation Ltd. vs Darius Shapur Chenai & Ors**[6], it was held that the provisions of Section 5-A of Act, 1894 must be read in the light of Article 300-A of the Constitution.

33. The legal position with regard to nature of right conferred by Section 5-A is well settled and we do not consider it necessary to burden the judgment by citing more precedents.

<u>Applicability and Scope of Section 17 of the Act</u>

34. The relevant part of Section 17 of the Act as applicable in the State is extracted below:

> "**17. Special powers in case of urgency. – (1)** In cases of urgency whenever the appropriate Government, so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.
>
> **(2)** Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of

6 (2005) 7 SCC 627 (para 10)

providing convenient connection with or accesses to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances :

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

(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)."

35. It is clear from plain reading of the provisions that the power under Section 17 could be invoked only in cases of urgency or unforeseen emergency. As the provision is an exception to the normal procedure and takes away valuable right of the affected person to object to the proposed acquisition, therefore, exercise of power under the said provision requires a greater degree of care and circumspection. The said aspect has been emphasized by the Supreme Court in **Darshan Lal Nagpal (Dead) By Lrs. vs. Govt. of NCT of Delhi and others**[7], as follows:

"What needs to be emphasized is that although in exercise of the power of eminent domain, the State can acquire the private property for public purpose, it must be remembered that compulsory acquisition of the property belonging to a private individual is a serious matter and has grave repercussions on his

7 (2012) 2 SCC 327 (paragraph 28)

> Constitutional right of not being deprived of his property without the sanction of law - Article 300-A and the legal rights. Therefore, the State must exercise this power with great care and circumspection. At times, compulsory acquisition of land is likely to make the owner landless. The degree of care required to be taken by the State is greater when the power of compulsory acquisition of private land is exercised by invoking the provisions like the one contained in Section 17 of the Act because that results in depriving the owner of his property without being afforded an opportunity of hearing."
>
> (emphasis supplied)

36. In **Union of India and others vs. Shiv Raj and others**[8], the Supreme Court reiterated that the right conferred by Section 5-A in favour of the owner of land is a valuable right and not an empty formality and he could not be deprived of the same unless there are good and valid reasons and within the limitations prescribed under Section 17(4) of Act, 1894.

Interplay between Section 5-A and Section 17 of the Act

37. The interplay between Section 5-A and 17(4) of the Act, 1894 has been succinctly explained by the Supreme Court in **Union of India and others vs. Mukesh Hans**[9]. It has been held that mere existence of urgency or unforeseen emergency, though is a condition precedent for invoking Section 17(4), by itself is not sufficient to direct the dispensation of the enquiry under Section 5-A of the Act. It requires formation of an opinion by the appropriate Government regarding existence of such urgency or unforeseen emergency as would require dispensation of enquiry under Section 5-A of the Act. It has been held in unequivocal terms that had it been the intention

8 (2014) 6 SCC 564
9 (2004) 8 SCC 14

of the legislature that mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would be sufficient to dispense with enquiry under Section 5-A, then the later part of sub-section (4) of Section 17 would not have been necessary and the legislature in sub-sections 17(1) & (2) itself could have incorporated that in such a situation, existence of urgency or unforeseen emergency would be automatic. It has thus been held that the language of the provision clearly reveals that the appropriate Government is obliged to further consider the need for dispensing with the enquiry under Section 5-A in spite of existence of urgency or unforeseen emergency. The said proposition of law has been further clarified by stating that in a given case, it may be possible that the urgency noticed by the appropriate Government under Section 17(1) or unforeseen emergency under Section 17(2) may be of such amplitude which itself may form basis to dispense with the enquiry but in such an eventuality, there is again a need for application of mind by the appropriate Government that such an urgency is inherent in the very nature of the scheme. The relevant observations (in para 32) explaining the above legal proposition is extracted below:

> "**It requires an opinion to be formed by concerned government that along with existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A enquiry, which indicates that the legislature intended that the appropriate government to apply its mind before dispensing with Section 5-A enquiry. It also indicates the mere existence of an urgency under Section 17 (1) or unforeseen emergency**

> **under Section 17 (2) would not by itself be sufficient for dispensing with Section 5-A enquiry. If that was not the intention of the legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the legislature in Section 17 (1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A enquiry will be dispensed with, but then that is not language of the Section which, in our opinion, requires the appropriate Government to further consider the need for dispensing with Section 5-A enquiry in spite of the existence of unforeseen emergency**. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5-A inquiry does not mean that in every case when there is an urgency contemplated under Section 17(1) and unforeseen emergency contemplated under Section 17(2) exists that by itself would not contain the need for dispensing with Section 5-A enquiry. ..... There is need for application of mind by appropriate Government that such an urgency for dispensing of Section 5-A enquiry is inherent ..... .”
>
> (emphasis supplied)

38. The legal principles formulated in Union of India and others vs. Mukesh Hans, have been reiterated in **Anand Singh and another v. State of U.P. and others[10],** in the following words:

> “43. The exceptional and extraordinary power of doing away with an enquiry under Section 5-A in a case where possession of the land is required urgently or in an unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5-A. Exceptional the power, the more circumspect the Government must be in its exercise. The Government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5-A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5-A.
>
> 44. A repetition of the statutory phrase in the notification that the State Government is satisfied that the land specified in the notification is urgently needed and the provision contained in Section 5-A shall not apply, though may initially raise a

10 (2010) 11 SCC 242

> presumption in favour of the Government that prerequisite conditions for exercise of such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which the power has been exercised. Upon challenge being made to the use of power under Section 17, the Government must produce appropriate material before the Court that the opinion for dispensing with the enquiry under Section 5-A has been formed by the Government after due application of mind on the material placed before it."

SUBJECTIVE SATISFACTION – SCOPE OF JUDICIAL REVIEW

39. It is now well settled by a series of judgments of the Supreme Court that the satisfaction of the appropriate Government as regards need for invocation of urgency power under Section 17 of the Act is a subjective satisfaction and not an objective one. At the same time, it is not an empty formality, but requires application of mind to the relevant factors. Thus, mere recital in the acquisition notifications that the land is urgently needed may raise a presumption in favour of the Government but if the same is challenged before the Court, the Government shall have to produce relevant material before the Court on basis of which opinion was formed for dispensing with the enquiry under Section 5-A. The Government will have to satisfy the Court that the formation of opinion was based on relevant material germane to the issue.

40. A three-Judge Bench of the Supreme Court, in ***Narayan Govind Gavate Vs. State of Maharashtra***[11], held that even where under the statute, the satisfaction of authorities is a subjective one,

11 (1977) 1 SCC 133

judicial review is permissible if there was no material at all or the material was so insufficient that no man could reasonably reach that conclusion. The burden of proof is on the State. It has been further held that even if, there is recital in the notification that condition precedent to the exercise of power has been fulfilled, the Court may consider and decide whether the Authority concerned has applied its mind to really relevant facts of a case with a view to determining that condition precedent to the exercise of power has been fulfilled. Thus, it has been observed -

> "11…. When the formation of an opinion or the satisfaction of an authority is subjective but is a condition precedent to the exercise of a power, the challenge to the formation of such opinion or to such satisfaction is limited, in law, to three points only. It can be challenged, firstly, on the ground of mala fides; secondly, on the ground that the authority which formed that opinion or which arrived at such satisfaction did not apply its mind to the material on which it formed the opinion or arrived at the satisfaction, and, thirdly, that the material on which it formed its opinion or reached the satisfaction was so insufficient that no man could reasonably reach that conclusion. So far as the third point is concerned, no court of law can, as in an appeal, consider that, on the material placed before the authority, the authority was justified in reaching its conclusion. The court can interfere only in such cases where there was no material at all or the material was so insufficient that no man could have reasonably reached that conclusion….."
>
> … … … … … …
>
> 28. ... We think that the original or stable onus laid down by Section 101 and Section 102 of the Evidence Act cannot be shifted by the use of Section 106 of the Evidence Act, although the particular onus of proving facts and circumstances lying especially within the knowledge of the official who formed the opinion which resulted in the notification under Section 17(4) of the Act rests upon that official. The recital, if it is not defective, may obviate the need to look further. But, there may be circumstances in the case which impel the court to look beyond it. And, at that stage, Section 106 of the Evidence Act can be invoked by the party assailing an order or

notification. It is most unsafe in such cases for the official or authority concerned to rest content with non-disclosure of facts especially within his or its knowledge by relying on the sufficiency of a recital. Such an attitude may itself justify further judicial scrutiny.

… … … … … …

32. It is also clear that, even a technically correct recital in an order or notification stating that the conditions precedent to the exercise of a power have been fulfilled may not debar the court in a given case from considering the question whether, in fact, those conditions have been fulfilled. And, a fortiori, the court may consider and decide whether the authority concerned has applied its mind to really relevant facts of a case with a view to determining that a condition precedent to the exercise of a power has been fulfilled. If it appears, upon an examination of the totality of facts in the case, that the power conferred has been exercised for an extraneous or irrelevant purpose or that the mind has not been applied at all to the real object or purpose of a power, so that the result is that the exercise of power could only serve some other or collateral object, the court will interfere."

(emphasis supplied)

41. The same principles have been reiterated in the case of **Anand Singh** as follows:

"44. …… upon challenge being made to the use of power under Section 17 the Government must produce appropriate material before the Court that the opinion for dispensing with enquiry under Section 5-A has been formed by the Government after due application of mind on the material placed before it

…….. 45. It is true that power conferred upon the Government under Section 17 is administrative and its opinion is entitled to due weight, but in a case where the opinion is formed regarding the urgency based on considerations not germane to the purpose, the judicial review of such administrative decision may become necessary."

42. In **Rajasthan Housing Board and others vs. Shri Kishan and others**[12], the Supreme Court held that as long as there is material upon which the government could have formed the said satisfaction fairly, the Court would not interfere nor would examine the material as an Appellate Authority.

43. While applying the said legal principles, a Division Bench of this court in **Smt. Manju Lata Agrawal vs. State of U.P. and others**[13], observed that each case has to be examined in the backdrop of the facts of that case and that no straight jacket formula can be evolved to exhaustively lay down the circumstances for applicability of the urgency provisions. The role of the Court is limited to examination of any material as may be germane to the formation of opinion about invoking the urgency clause and whether the power has been exercised in a malafide manner. The relevant observations are as follows:

> "42. The question whether inquiry under Section 5-A of the Act is necessary or not is a question of fact and it requires to be determined by the Government in the facts and circumstances of each case for the reason that no straight jacket formula can be evolved as under what circumstances the urgency clause should be invoked. The role of the Court is very limited and it can only see as to whether there was any material to form an opinion about invoking the urgency clause or whether the Government exercised the power in a malafide manner. The question as to whether urgency exists or not, is primarily a matter for determination of the Government subject to the scope of judicial review by the courts of law. "

12 (1993) 2 SCC 84
13 2007 (9) ADJ 447 (DB)

44. In the same judgment, i.e. **Smt. Manju Lata Agrawal**, the Division Bench noted the distinction between objective and subjective satisfaction by referring to various previous judgments. It has been held, relying on **Zora Singh v. J.M. Tandon**[14], that in case of subjective satisfaction, if some of the reasons turned out to be extraneous or otherwise unsustainable, the decision would be vitiated as it would not be possible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. Even if, there was some irrelevant material along with other evidence on basis of which the finding could be sustained, a Writ-Court which does not sit in appeal, would not interfere. The relevant extract delineating the above distinction between objective and subjective satisfaction is as follows:

> 50. In view of the above, it is apparent that if the order passed by an Authority is based on a consideration of certain relevant material and some other irrelevant and non-existing material, the order can be sustained, provided the relevant existing material was sufficient for formation of such an opinion. Thus, if the order can be passed on relevant and existing grounds, the consideration of irrelevant or non-existent material becomes immaterial.
>
> 51. However, the aforesaid legal proposition applies only in a case where the Authority has to pass an order on objective satisfaction. It carves out an exception that such a proposition would not apply where the decision is to be taken by the Authority on subjective satisfaction.

14 AIR 1971 SC 1537

53. In *Zora Singh v. J.M. Tandon, AIR 1971 SC 1537*, the Court considered a similar issue and held as under:

> "The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where vie conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiorari, the superior Court does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into question of the sufficiency of evidence."

55. Thus, in case where the order is based on subjective satisfaction, consideration of irrelevant or non-existent material becomes fatal and vitiates the order itself. Such a view stands fortified by the judgments of the Hon'ble Supreme Court in **Keshav Talpade v. Emperor, AIR 1943 FC 1; Shibban Lal v. State of Utter Pradesh, AIR 1954 SC 179; Rameshwar Lal v. State of Bihar, AIR 1968 SC 1303; Puspadevi v. M.L. Wadhavan AIR, 1987 SC 1748; and Vashisth Narain v. State of Utter Pradesh, AIR 1990 SC 1272**.

56. Same remains the position where the Authority fails to consider the vital facts, for the reason that if the material or vital facts which would influence the mind of the Authority one way or the other, are not placed or are not considered by the Authority, it would vitiate the subjective satisfaction. The Authority must exercise due care and caution and act fairly and justly in exercise of its powers. However what is a vital fact would depend on the facts of each case. Therefore, only those matters alone should be regarded as vital which are reasonably likely to affect the decision of the Authority. Non-consideration of the vital fact may taint the satisfaction of the Authority. (Vide **Tushar Govindji v. Union of India, AIR 1985 SC 511; Sitaram v. State of Rajasthan, AIR**

1986 SC 1072; and Ahmed Nissar v. State of Tamil Nadu, AIR 1999 SC 3897).

(emphasis supplied)

APPLICATION TO FACTS OF THE CASE

45. The stage is now set for discussion and analysis of the core issue as to whether invocation of urgency power under Section 17 of the Act, for dispensing with the enquiry under Section 5-A of the Act, passes the muster of judicial review or not.

46. The Collector, Gautam Budh Nagar, while issuing no-objection certificate to the acquisition of proposal, also recommended for dispensation of enquiry under Section 5-A by invoking power under Section 17 as the scheme was stated to be an important scheme of Ghaziabad Development Authority and for which land was urgently required with a view to ensure planned development of the area. The relevant part of his recommendation is as follows: -

"गाजियाबाद विकास प्राधिकरण की यह एक अत्यन्त महत्वपूर्ण योजना है जिसमें भूमि की तत्काल आवश्यकता है परियोजना व क्षेत्र के सुनियोजित विकास के महत्व को दृष्टिगत रखते हुए इस भू.अर्जन प्रकरण में अर्जन की कार्यवाही भूमि अर्जन अधिनियम की धारा 4 व 6 के साथ पठित धारा 17 के अन्तर्गत करने हेतु संस्तुति की जाती है।"

"This is a very important scheme of the Ghaziabad Development Authority, in which the land is required urgently. Keeping in view the project and the importance of planned development of the area, proceedings for acquisition of land, in this land acquisition case, are recommended to be taken u/s 4 and 6 of Land Acquisition Act read with Section 17."

(English translation by Court)

47. While it is now settled by a series of decisions of the Supreme Court that acquisition of land for planned development is a public purpose, it has been held time and again that the same itself is not sufficient to warrant exercise of power under Section 17 of the Act. In **Radhe Shyam (Dead) through Lrs. and others vs. State of U.P. and others**[15], it has been held that the mere existence of a public purpose however, loudable would not entitle the Government to invoke the urgency provisions. It could only be invoked when the purpose of acquisition cannot brook delay of even few weeks or months likely to be taken in conducting inquiry under Section 5-A of the Act otherwise the public purpose for which the land is sought to be acquired would be frustrated. It is worth noticing the observations made in this regard by the Supreme Court in the said judgment :

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

48. In several cases relating to invocation of the urgency power under Section 17 where the land is needed for development of

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15 2011 (5) SCC 553

residential housing scheme, the view taken is that ordinarily, in such cases dispensation of enquiry under Section 5-A is not warranted, as considerable time is consumed in planning, execution and implementation of such schemes. Few judgments of Supreme Court wherein the said view has been taken are being noted.

49. In **Anand Singh**, the acquisition was by Gorakhpur Development Authority, for development of a residential colony. Considering similar grounds for invoking the emergency power, it was observed that -

> "Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated under Section 5-A may not be held and objections of landowners/persons interested may not be considered. In many cases, on general assumption likely delay in completion of enquiry under Section 5-A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realising that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously."

50. In **Ramdhari Jindal Memorial Trust vs. Union of India and others**[16], the same view has been taken:

> "Government when invokes urgency power under Sections 17(1) and (4) for the public purpose like "planned development of city" or "development of residential area" or "residential scheme", initial presumption does not arise in favour of Government. On the contrary, heavy burden lies on the Government to prove that use of power is justified and dispensation of inquiry was necessary. Power of urgency under Section 17 for a public purpose like "development of a housing scheme" or "residential scheme" cannot be invoked as a matter of rule or in a mechanical manner or by simply referring to language of the statute but is to be exercised as an exception".

16 (2012) 11 SCC 370

51. In fact, the reason for invocation of the provisions of Section 17 of the Act is contained in a 'Note' dated 25.06.2024/30.06.2024 submitted in furtherance of a letter of the Director (Land Acquisition) dated 26.06.2024, requesting the State Government to proceed with the issuance of notification under Section 4 and 17 of the Act, 1989. The same is as under: -

> "13. प्रस्तावित भूमि का अर्जन की योजना में विलम्ब होने पर अनधिकृत निर्माण की संभावना है। प्रश्नगत योजना जनहित की है। अतः अर्जन हेतु भूमि अध्याप्ति 1894 की धारा.4 व 6 की विज्ञप्ति जारी कराने के लिए धारा.17 के प्राविधान लागू किया जाना आवश्यक है।"
>
> "13. There is likelihood of construction of unauthorised constructions in case of delay in acquisition of the proposed land. The scheme in question is for public welfare. Hence, in order to get notification for acquisition of land, issued, u/s 4 and 6 of the Land Acquisition Act, 1894, it is necessary to invoke provisions of Section 17."
>
> (English translation by Court)"

52. The reason which thus seems to have weighed with the State to invoke the urgency power under Section 17(1) and (4) was the likelihood of unauthorized constructions coming up over the land required for public welfare. The question which thus needs consideration is whether this reasoning can be held to be valid for dispensing with the enquiry under Section 5-A of the Act.

53. In **Om Prakash and another vs. State of U.P. and others**[17], an exactly similar plea was set up by the State based on letter dated 14.12.1989 written by Noida to the Land Acquisition Officer, proposing urgent acquisition of the land. It contained a recital to the

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17 (1998) 6 SCC 1

effect that in case immediate action for acquisition of the land was not taken, there would be possibility of encroachment. The said plea was duly considered by the Supreme Court and it was held that the same could not constitute a valid ground to dispense with the enquiry under Section 5-A of the Act. The relevant observations made in this regard are quoted below: -

> "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-CA 3, CA 4 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 then 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 the 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 takes 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 request dated 14-12-1989 for invoking urgency powers must be held to be totally irrelevant."
>
> (emphasis supplied)

54. In **Radhey Shyam (Dead) through LRs. and Others**, the same reasoning adopted by the State Government for dispensing with the enquiry under Section 5-A of the Act was repelled, observing as follows: -

> "83. The apprehension of the respondents that delay in the acquisition of a land will lead to enormous encroachment is totally unfounded. It is beyond the comprehension of any person of ordinary prudence to think that the landowners would encroach their own land with a view to frustrate the concept of planned industrial development of the district."
>
> (emphasis supplied)

55. Again in **Greater Noida Industrial Development Authority vs. Devendra Kumar and Others**[18], the Supreme Court relying upon **Anand Singh's** case and **Radhey Shyam's** case, repelled a similar plea and held the invocation of the urgency power under Section 17 to be a result of arbitrary exercise of power and non-application of mind. The Supreme Court went on to hold that inefficiency of the State apparatus to take action in relation to illegal constructions or unauthorized colonization of agricultural land

18 2011 (6) ADJ 480

cannot be used as a tool to justify denial of opportunity of hearing to the land owners and other interested persons in terms of Section 5-A of the Act. The relevant portion of the judgment is extracted below: -

> "24. At the outset, we deem it proper to observe that none of the Senior Counsel appearing for the petitioners assailed the finding recorded by the High Court that the decision of the State Government to invoke the urgency provisions contained in Section 17(1) and to dispense with the application of Section 5A was vitiated due to arbitrary exercise of power and non application of mind. Of course, Shri LN. Rao and Shri Dushyant A. Dave, learned Senior Counsel did suggest that Section 17(1) and (4) was invoked to check mushroom growth of unauthorised colonies in the area around Greater Noida Phase I, but in our view, this did not provide a valid justification to invoke Section 17(1) and to dispense with the application of Section 5A and the High Court rightly nullified this exercise by relying upon the judgments of this Court in Anand Singh's case and Radhey Shyam's case. We may add that unauthorised plotting of agricultural land or large scale illegal constructions could not have been possible without active or tacit connivance of the functionaries and officers of the State and/or its agencies/instrumentalities. If the Authority wanted to prevent unauthorised colonization of agricultural land or illegal constructions, then nothing prevented it from taking action under Section 9 of the 1976 Act. No explanation has been given by the State Government and the Authority as to why appropriate measures were not taken to prevent unauthorised colonization of land in Shahberi and elsewhere. The inefficiency of the State apparatus to take action in accordance with law cannot be used as a tool to justify denial of opportunity of hearing to the landowners and other interested persons in terms of Section 5A of the 1894 Act."
>
> (emphasis supplied)

56. Once again, the same situation arose before the Supreme Court in **Sahara India Commercial Corporation Limited and Others vs. State of U.P. and Others**[19]. In that case also the acquisition was by Ghaziabad Development Authority, Ghaziabad and the enquiry under Section 5-A was dispensed with invoking the power under Section 17 of the Act. The reasoning given for invocation of power

19 2017 (11) SCC 339

under Section 17 was again the same, i.e. to prevent unauthorized constructions over the land proposed to be acquired. The Supreme Court relied on the previous judgment in case of **Om Prakash vs. State of U.P.** and ruled that dispensation of enquiry under Section 5-A would not be justified on the said ground. It would be advantageous to quote the relevant part: -

> "It will not be necessary to burden this order by a detailed reference to the numerous precedents available as to the scope and ambit of the jurisdiction of the Court to interfere with what is essentially a subjective satisfaction of the authority for invoking the urgency clause under Section 17. The power is extremely circumscribed and what facts would justify the invocation of the said power can only be visualised illustratively and not exhaustively. In the present cases, from the proceedings of the acquisition prior to the issuance of notification under Section 4 and particularly from a certificate setting out the grounds for invoking the urgency clause it appears that the sole ground for the same is to prevent unauthorised construction which, if made, would make it difficult to take possession of the land. This is evident from the document described as "Certificate for invoking of Section 17" dated 4-3-2004 signed by the Officer on Special Duty, Ghaziabad Development Authority, Ghaziabad, the contents of which are as follows:
>
> *"Certificate for invoking of Section 17"*
>
> This is to certify that for the planned development of the city of Ghaziabad, the expeditious acquisition of the proposed land of Rasoolpur Yaqootpur is required, because this is a scheme of public interest and any delay may cause unauthorised construction at workplace, after which possession of the land would be difficult.
>
> Therefore, for the acquisition of land under this scheme it is necessary to issue notification under Sections 4 and 6 of the Land Acquisition Act, 1894 for which the invoking of Section 17 is necessary.
>
> sd/-
> Officer on Special Duty,
> Ghaziabad Development Authority,
> Ghaziabad
> Countersigned
> sd/-
> Addl. District Magistrate (L.A.)
> Irrigation, Ghaziabad"

> The above being the stated ground, the Court would not be required to travel beyond what has been stated in the aforesaid certificate to determine the validity The invocation of the urgency clause under Section 17 of the Act.
>
> 8. The view of this Court in Om Prakash being with regard to an identical ground and the purpose of acquisition in Om Prakash being largely similar to the present cases, we are of the view that the facts of the present cases would not justify a departure from what has been held in Om Prakash."

57. We now come the the precedents cited by the learned Advocate General, Shri Ajay Kumar Mishra, in support of the submission that the acquisition being for construction of residential colony under planned development scheme, the invocation of power under Sections 17(1) & 17(4) cannot be faulted. The first judgment cited by him is that of **State of U.P. vs. Smt. Pista Devi**[20], wherein a two-Judge Bench of the Supreme Court while dealing with an acquisition for providing housing sites under Delhi Development Act, observed as follows:

> "The State Government acted upon the said reports, certificates and other material which were before it. In the circumstances of the case it cannot be said that the decision of the State Government in resorting to section 17(1) of the Act was unwarranted. The provision of housing accommodation in these days has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that in the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to invoke section 17(1) of the Act and to dispense with the compliance with section 5-A of the Act.
>
> Although the said section is not in terms applicable to the present acquisition proceedings, we are of the view that the above provision in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the country when they

20 (1986) 4 SCC 251

> acquire large tracts of land for the purposes of land development in urban areas."

58. Notably, the judgment in **Smt. Pista Devi** fell for consideration in **Om Prakash** and the Court held that the decision in **Smt. Pista Devi** must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in **Narayan Govind Gavate**. The relevant observations from the judgment in **Om Prakash** are extracted below:

> "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. v. Smt. Pista Devi, (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 a 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 situated in 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 v. State of Maharashtra, (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. ”

59. Once again, the observations of two-Judge Bench in **Pista Devi** came up for consideration in **Anand Singh** and the view taken in **Om Prakash** that the observations made in **Pista Devi** should be confined to the fact situation of those days and that two-Judge Bench could not have laid down a proposition contrary to the decision in **Narayan Govind Gavate** was explicitly re-affirmed. It has been held :

> “The special provision has been made in Section 17 to eliminate enquiry under Section 5-A in deserving and cases of real urgency. The Government has to apply its mind on the aspect that urgency is of such nature that necessitates dispensation of enquiry under Section 5-A. We have already

> noticed a few decisions of this Court. There is a conflict view in the two decisions of this Court viz. **Narayan Govind Gavate and Pista Devi**. In **Om Prakash** this Court held that the decision in **Pista Devi** must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in **Narayan Govind Gavate**. We agree."
>
> (emphasis supplied)

60. In **Radhy Shyam** yet again the judgment in **Pista Devi** and two more judgment of the Supreme Court in **Rajasthan Housing Board and others vs. Shri Kishan and others**[21] and **Chameli Singh v. State of U.P.**[22], were duly considered and thereafter in paragraph-77(viii), it has been reiterated that the power under Section 17(1) and 17(4) can be invoked by the State only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Implementation of scheme relating to development of residential, commercial, industrial or institutional areas usually take few years and therefore, invocation of urgency provision is not ordinarily warranted.

61. Learned Advocate General further relied on **Nand Kishore Gupta vs. State of U.P. and Others and other connected matters**[23], wherein a two Judge Bench of the Supreme Court distinguished the previous judgment in **Om Prakash**, inter alia on the ground that it was a case where a much smaller area (about 500 acres) was involved, whereas in the case before the Supreme Court, i.e. **Nand Kishore Gupta**, the area under acquisition was more than

21 (1993) 2 SCC 84
22 (1996) 2 SCC 549
23 2010 (10) SCC 282

1600 acres apart from 25 million sq. meters of land to be acquired for the purposes of development of five adjoining land parcels and there was interlinking between the highway and the acquisition of land for establishing the five townships. Therefore, the apprehension of encroachment of such a huge tract of land was imminent and held to be a relevant factor while invoking urgency power under Section 17 of the Act. The judgment in **Om Prakash** was further distinguished on the ground that in the said case, there was unexplained delay after issuance of notification under Section 4 of the Act, but which was lacking in the case under consideration. It is noteworthy that in **Om Prakash**, the time interval between Section 4 and Section 6 notifications was of more than eleven months, whereas in **Nand Kishore Gupta**, it was barely of four months. The relevant observations from the judgment in **Nand Kishore Gupta vs. State of U.P.** are extracted below: -

> 96. We are not impressed by the argument that the encroachment issue was not a relevant factor. This argument was based on the reported decision in Om Prakash v. State of U.P. It must be said that the actual scenario in that case was different. In that case, the Court was considering the acquisition of area of about 500 acres comprising of 437 plots, whereas, in the present case, the area to be acquired for the Expressway alone was more than 1600 ha. This is apart from the 25 million sq m of land which was liable to be acquired for the purposes of development of five land parcels. There was interlinking between the acquisition of land for the highway and the acquisition of land for establishing the five townships.
>
> 97. In Om Prakash v. State of U.P. there was unexplained delay after issuance of Section 4 notification, which is not the case here. Therefore, we do not think that what has been said in Om Prakash v. State of U.P. would be apposite here. Every case has to be decided on its own facts. This is apart from the fact that it is not

> specifically laid down in Om Prakash v. State of U.P. that the encroachment was never a relevant factor for dispensing with the enquiry under Section 5-A. Again we hasten to add that this was not the only factor considered by the State Government and even the High Court has not held the same to be the only factor for dispensing with the enquiry."

62. The judgment in **Nand Kishore Gupta** was based on the facts of that case. The Supreme Court itself observed that - '*every case has to be decided on its own facts*'. The facts of the instant case are strikingly similar to the facts of **Om Prakash**, as in the present case, the total area acquired i.e. 229.3828 acres, is even less than the area involved in **Om Prakash** (494.26 acres). The present acquisition is also by GDA for developing a residential colony, as in **Sahara India**, wherein the Supreme Court chose to rely upon **Om Prakash** and held that apprehension of unauthorized possession or illegal construction could not be sole ground for dispensation of enquiry under Section 5-A of the Act, 1897. The judgment in **Nand Kishore Gupta** was also distinguished by the Supreme Court in its latter judgment in **Radhey Shyam**, observing that :

> "In **Nand Kishore Gupta v. State of U.P.** the acquisition was upheld because the land was urgently needed for construction of Yamuna Expressway and by the time the matter was decided by this Court, huge amount had been spent on the project. As against this, the exercise of power under Sections 17(1) and/or 17(4) for the acquisition of land for residential, industrial and commercial purposes, construction of sewage treatment plant and district jails was held to be legally impermissible in **Raja Anand Brahma Shah v. State of U.P., Narayan Govind Gavate v. State of Maharashtra, Om Prakash v. State of U.P., Union of India v. Krishan Lal-Arneja, Essco Fabs (P) Ltd. v. State of Haryana, Babu Ram v. State of Haryana and Anand Singh v. State of U.P.**"

63. It is noteworthy that in **Om Prakash,** the Supreme Court considered an earlier judgment in **A.P. Sareen and Others vs. State of U.P. and Others**[24], wherein the dispensation of enquiry under Section 5-A of the Act, 1894 for planned development of the city or town was upheld. The Supreme Court observed that it was based on particular facts of that case. No absolute proposition can be laid down that in every case where land is required for planned development of city or town, there would be urgency, as otherwise it would render otiose the provisions of Section 5-A. To wit -

> "23. .....xxxxxxxx.....… It will all depend upon the facts and circumstances of each case. The aforesaid observations cannot be held to be laying down any 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 otiose or inoperative. Such is not the ratio of the aforesaid decision and nothing to that effect can even impliedly be read in aforesaid observation which is of a general nature. It only suggests that in appropriate cases, the urgency clause can be invoked when the land is proposed to be acquired for planned development of city or town."
>
> (emphasis supplied)

64. Another judgment on which great emphasis has been laid by the learned Advocate General is that of the Apex Court in **Kali Charan vs. State of U.P. and Other**[25], decided by a two Judge Bench. Therein, Supreme Court has upheld the judgement of this court in **Kamal Sharma vs. State of U.P. and Others and other connected matters**[26], and disapproved the judgement of this Court

24 (1997) 9 SCC 359
25 2024 SCC OnLine SC 3472
26 2023 (9) ADJ 713 (DB)

in the case of **Shyoraj Singh and Others vs. State of U.P.**[27], taking a contrary view. In **Kamal Sharma**, the Division Bench upheld the dispensation of enquiry under Section 5-A of the Act with the aid of Sections 17(1) and 17(4) of the Act, whereas in **Shyoraj Singh**, the same acquisition was held to be illegal, placing reliance mainly on the judgement of the Supreme Court in **Radhy Shyam**.

65. In the aforesaid cases, the acquisition was by Yamuna Expressway Industrial Development Authority for the planned development. The acquisition was part of an integrated project. Initially, it comprised of construction of Yamuna Expressway and thereafter development of six townships alongside the expressway. In the initial phase, the land was acquired for construction of the expressway and in the second phase, the acquisition was for development of integrated townships. The land, which was subject matter of the impugned acquisition notifications before the High Court, was part of the second phase of development of the townships along the expressway. It included the land of sixteen villages admeasuring 18 thousand and odd acres. The Division Bench in **Kamal Sharma** upheld the invocation of the urgency powers under Section 17(1) and 17(4) for dispensing with the enquiry under Section 5-A of the Act mainly relying on the judgement of the Supreme Court in **Nand Kishore Gupta**. In the said case, the acquisition was for construction of same expressway

27 2017 (Sup) ADJ 558

i.e., Taj Expressway by Taj Expressway Authority (subsequently named as Yamuna Expressway Industrial Development Authority: YEIDA), the first phase of the integrated project pertaining to development of the Expressway and contiguous land parcels. The Supreme Court upheld the acquisition looking to the imminent need of having expressway for overall development of the area; enormity of the project; indivisible character of the project, being integral part of a larger project. The following observations are pertinent :

> "57. The Expressway is a work of immense public importance. The State gains advantages from the construction of an Expressway and so does the general public. Creation of a corridor for fast moving traffic resulting into curtailing the traveling time, as also the transport of the goods, would be some factors which speak in favour of the Project being for the public purpose. Much was stated about the 25 million square meters of land being acquired for the five parcels of land. In fact, in our opinion, as has rightly been commented upon by the High Court, the creation of the five zones for industry, residence, amusement etc., would be complimentary to the creation of the Expressway.
>
> 58. It cannot be forgotten that the creation of land parcels would give impetus to the industrial development of the State creating more jobs and helping the economy and thereby helping the general public. There can be no doubt that the implementation of the Project would result in coming into existence of five developed parcels/centers in the State for the use of the citizens. There shall, thus, be the planned development of this otherwise industrially backward area. The creation of these five parcels will certainly help the maximum utilization of the Expressway and the existence of an Expressway for the fast moving traffic would help the industrial culture created in the five parcels. Thus, both will be complimentary to each other and can be viewed as parts of an integral scheme. Therefore, it cannot be said that it is not a public purpose."

66. The Division Bench in **Kamal Sharma** having regard to the same factors i.e., (i) integrated nature of the project (as 'contiguous part of the project'); (ii) its significance; (iii) enormity of the land

under acquisition; and (iv) likelihood of the project being frustrated by delay, in case opportunity of hearing was afforded to large number of villagers of different villages, preferred to follow the Apex Court in **Nand Kishore Gupta** in preference to **Radhy Shyam** where the acquisition was for stand alone project for development of housing scheme. It was held that these factors, collectively constituted sufficient material for the formation of opinion by the State Government to dispense with the enquiry. In other words, the judgment in **Radhy Shyam** was distinguished, based on the facts of the case before the Court. The relevant observations in the judgement of **Kamal Sharma** clearly indicating the factors, which weighed with the Division Bench while upholding the invocation of urgency powers, and for placing reliance on the judgement in **Om Prakash** in preference to the **Radhy Shyam**, are extracted below:

> "**F. Appreciation of the material on the Facts of the Instant Case:-**
>
> 189. The learned Senior Counsel for the respondent-YEIDA has taken us to the decision in Nand Kishore Gupta (supra) extensively to vehemently urge that the project in question, "for planned development of the parcels of the lands of different villages alongside Yamuna Expressway", is part of an integrated project under the Master plan, Phase-1, 2031. The contiguous lands in the circumference of 2 kms. on both sides of the Expressway have been acquired to complete the project which was one project for construction of Expressway and development of land parcels for establishment of townships. The Apex Court in Nand Kishore Gupta (supra) has noted that there was interlinking between the acquisition of land for the Highway and the acquisition of land for establishing five townships. The acquisitions were though made by different notifications, village-wise and it was neither for Expressway nor for five land parcels as in the case of Nand

Kishore Gupta (supra), but are part of the same integrated project. The land parcels of Village Accheja Bujurg and Rampur Bangar etc., were already included in the project for development of Taj Expressway, renamed as Yamuna Expressway. The statement in the counter affidavits, noted in the foregoing paragraphs of this judgment, were reiterated to assert that the acquisition of the land parcels of the Villages-in-question was indispensable for planned development of the area for integrated Township. There was also a need for providing basic infrastructural facilities to the Villages falling in the Notified area of YEIDA and the need for contiguous land for development which was likely to be frustrated by the delay which would have occurred, in case, the opportunity of hearing was afforded to the villagers of such a large number of lands of nine villages. The enormousness of the project is one of the factors which has weighed in the mind of the State to invoke the urgency clause.

205. We may be alive of the situation that it was not an acquisition for expansion of already existing city or developed area. With the creation of Taj Expressway Authority, the project for construction of Taj Expressway was conceived in the year 2001 which could not be implemented on account of the litigations in the Court. The Apex Court in the case of Nand Kishore Gupta (supra) had noted that:-

> "57. The Expressway is a work of immense public importance. The State gains advantages from the construction of an Expressway and so does the general public. Creation of a corridor for fast moving traffic resulting into curtailing the traveling time, as also the transport of the goods, would be some factors which speak in favour of the Project being for the public purpose. Much was stated about the 25 million square meters of land being acquired for the five parcels of land. In fact, in our opinion, as has rightly been commented upon by the High Court, the creation of the five zones for industry, residence, amusement etc., would be complimentary to the creation of the Expressway.
>
> 58. It cannot be forgotten that the creation of land parcels would give impetus to the industrial development of the State creating more jobs and helping the economy and thereby helping the general public. There can be no doubt that the implementation of the Project would result in coming into existence of five developed parcels/centers in the State for the use of the citizens. There shall, thus, be the planned development of this otherwise industrially backward area. The creation of these five parcels will certainly help the maximum utilization of the Expressway and the existence of an Expressway for the fast moving traffic would help the industrial culture created in the five parcels. Thus, both will

> be complimentary to each other and can be viewed as parts of an integral scheme. Therefore, it cannot be said that it is not a public purpose."
>
> 206. It was noted by the Apex Court therein that looking to the enormousness of the area, the land acquired for the Expressway alone, apart from 25 millions meters of land which was liable to be acquired for the purposes of development of five land parcels, it cannot be argued that the encroachment issue was not a relevant factor. The interlinking between the acquisition of land for the highway and the acquisition of land for establishing five townships has been noted with approval by the Apex Court.
>
> 215. The reliance placed upon the judgment of the Apex court in Radhy Shyam (supra) by the counsels for the petitioners simply on the ground that urgency clause cannot be invoked in a project "for planned development of an area", from the statement in the acquisition notifications under challenge, is of no help to the petitioners, inasmuch as, this Court cannot ignore the nature of project in question, the material brought on record available before the State Government to invoke urgency. This is not a case where it can be said that there was no material before the State Government justifying invocation of urgency clause or there has been no application of mind of the State on the material brought before it. No fault in the decision-making process could be demonstrated. It is not a case of non-application of mind. The recital of formation of opinion by the Government, in its decision, was not necessary nor would vitiate the order on the ground that reasons have not been recorded."

67. On matter travelling to the Supreme Court, it was decided in **Kali Charan vs. State of U.P. and Others**[28]. The Supreme Court upheld the view taken by the Division Bench in **Kamal Sharma**. The Supreme Court noted that development of Taj Expressway was part of Special Development Zone policy of the State Government whereunder the Taj Expressway Project was conceived and planned as an integrated project comprising of acquisition of land for expressway and acquisition of land parcels for development of abutting townships along the expressway. The acquisition of

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contiguous land could not be separated from the acquisition of land for the expressway. The Supreme Court, having regard to the said aspect, distinguished the judgment in **Om Prakash** and agreed with the view taken by the Division Bench in **Kamal Sharma** in preference to **Shyoraj Singh**. This is evident from the following observations of the Supreme Court in **Kali Charan**:

> "32.The core question which requires this Court's consideration is whether the Division Bench of the Allahabad High Court in the case of Shyoraj Singh was justified in relying upon Radhy Shyam, so as to quash the acquisition notification pertaining to the development of the land adjoining the Yamuna Expressway. The relevant extracts from Radhy Shyam which are reproduced supra would make it clear that in the said case, this Court was considering a controversy relating to the land acquisition for the purpose of planned industrial development in District Gautam Budh Nagar through Greater Noida Industrial Development Authority. Hence, the project did not contemplate a planned and integrated development of an Expressway and the adjoining areas. It was a standalone project pertaining to the development in industrial Gautam Budh Nagar. However, it cannot be gainsaid that Yamuna Expressway is a vital heartline providing access to millions of commuters from National Capital Delhi to Agra. The Expressway also connects the prestigious upcoming Jewar Airport to adjoining areas. To assume that the Yamuna Expressway is a simple highway without any scope for simultaneous development of the adjoining lands for commercial, residential and other such activities would be unconceivable. A project of such magnitude and enormity would definitely require the involvement of the adjoining areas which would lead to an overall development of the State of Uttar Pradesh at large.
>
> 33. As observed above, the purpose behind the acquisition was unquestionably the Integrated development of lands abutting the Yamuna Expressway. The acquisition of the lands for the Expressway could not be isolated or separated from the acquisition of the abutting lands. This was precisely held in the case of Nand Kishore."

The conclusions have been summarized in paragraph no.38 as follows:

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

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

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

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

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

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

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

68. Learned Advocate General urged that the aforesaid conclusions in **Kali Charan** implies that the law laid down in **Radhy Shyam** has ceased to be good law. However, we are unable

to agree. Both **Kali Charan** and **Radhy Shyam** are by two-judge's Bench of the Supreme Court. The Supreme Court has preferred to follow the judgement in **Nand Kishore Gupta** as the facts of the case were closer to the facts in **Nand Kishore Gupta**. The Supreme Court itself has noted the distinction in the nature of acquisition while observing that in **Radhy Shyam**, the controversy related to planned industrial development for stand alone project and not for acquisition of land under any integrated project of such great significance. It also weighed with the Supreme Court that in previous challenges relating to same acquisition proceedings on three different occasions, in cases of Natthi, Narendra Road Lines and Yogesh Kumar, three different Division Benches of this Court have dismissed the writ petitions and the subsequent Division Bench in **Shyoraj Singh** had failed to consider the said aspect. The aforesaid consideration in paragraph no.35 is as follows:

> "35. Much stress was laid by the learned Counsel for the landowners on the issue that the Division Bench while deciding the impugned judgrnent in the case of Kamal Sharma could not have taken a different view from Shyoraj Singh and if at all, there was any doubt on the correctness of the view taken in Shyoraj Singh, then, the question of law was mandatorily required to be referred to a larger Bench. We feel that the said argument is fallacious on the fact of it. Much prior to Shyoraj Singh's decision, three different Division Benches of the Allahabad High Court by detailed judgments in the cases of Natthi, Narendra Road Lines and Yogesh Kumar had already affirmed the validity of invocation of the urgency Clause in the land acquisition notifications for the integrated development plan of 'Yamuna Expressway' by Respondent No. 3-YEIDA. It is trite to mention that in Shyoraj Singh, the Division Bench failed to consider the earlier Division Bench judgments in the cases of Natthi, Narendra Road Lines and Yogesh Kumar. In this background, the view taken by the Division

> Bench in the case of Shyoraj Singh is per incuriam, rather than that in Kamal Sharma."

69. The legal principle which thus emerges is that mere existence of public purpose is not sufficient to invest the authority with power to automatically invoke Sections 17(1) and 17(4) of the Act unless urgency is of such amplitude, that the same in itself could form basis to dispense with the enquiry. Even in such a case, there is again need for application of mind by the appropriate government that such an urgency is inherent in the very nature of scheme. If we read the dictum in **Nand Kishore Gupta** and **Radhy Shyam**, accordingly, we find no inconsistency, nor any implied overruling.

70. Reverting to the facts of the present case, it is pertinent to note that proposal for acquisition of land for development of the housing scheme in the name of Indrapuram Phase-2 was placed before the Board of GDA for the first time in the 87th Board Meeting on 29.06.2001. It mentions that in past a housing scheme in the name of Indrapuram Yojna covering an area of 1300 acres was developed by GDA and since the said scheme was barely 15 kms. from Connaught Place, therefore, in a short time, all the plots in the scheme had been sold out. There is need for developing a new scheme to meet the growing demand. The Development Authority does not have any land where new scheme could be launched. On east and north western side of Indrapuram, in Village Kanavani, large tract of land

was lying vacant, and it's use in the Master Plan 2001 is 'entertainment'. It could be acquired for construction of residential colony under planned development scheme by getting the land use, changed from 'entertainment' to 'residential'. As the new scheme would be near existing Indrapuram Yojna, therefore, it would get the benefit of trunk services already developed for Indrapuram Yojna. The Board approved the said proposal in the meeting held on 29.06.2001. It appears that thereafter a Site Selection Committee was constituted and it identified the land to be acquired and it comprises of land under cultivation, that of housing societies, farm houses, gram sabha and land over which building plans had been approved but on account of some reason or the other the permission stood lapsed or the sanction was cancelled. The report of Site Selection Committee was considered by GDA in the 88th Board Meeting held on 07.06.2002, almost after one year of its decision dated 29.06.2001, to acquire the land for development of a residential colony. It approved the proposal in the said meeting dated 07.06.2002.

71. On 04.10.2002 the Vice Chairman, GDA sent a communication addressed to District Magistrate, Gautam Budh Nagar intimating him of Board's resolution dated 07.06.2002. The details of khasra numbers to be acquired were mentioned in a list appended to the said letter. The land proposed to be acquired was

shown in the accompanying sajra plan with red colour. The land over which, according to GDA, abadi was in existence was shown with green colour and was excluded from the proposal for acquisition. The District Magistrate was requested to examine the proposal and thereafter forward the same to the State Government for publication of notifications under Sections 4(1) and 6/17 of the Act. In the said communication, although, request was made for invoking urgency power under Section 17 of the Act while issuing the notification under Sections 4 and 6 but there was no whisper as to why inquiry under Section 5-A of the Act was not possible and emergency power under Section 17 was required to be invoked.

72. On 11.12.2003, after more than one year, District Magistrate, Gautam Budh Nagar forwarded the proposal of GDA for acquisition of the land to the Director, Land Acquisition Directorate, Board of Revenue, U.P. Lucknow stating that he agrees with the proposal of GDA. Along with said letter, a report in prescribed form on 23 points was enclosed and request was made to him to issue notification under Section 4(1) readwith Section 17 of the Act. Along with it, a certificate issued by Officer-on-Special Duty, Ghaziabad Development Authority, Ghaziabad was enclosed stating that the scheme was in public interest and delay would result in illegal constructions, which would result in difficulty in taking possession of the acquired land, therefore, while issuing

notifications under Sections 4 and 6, it is necessary to invoke emergency powers under Section 17. Annexed therewith were also various certificates issued by GDA. The certificate No. 2 gave reason why it was not practicable to go for private negotiation for acquisition and certificate No. 4 as to why the GDA has proposed to acquire land under cultivation in preference to banjar and uncultivated land available in the vicinity. These are as follows:-

CERTIFICATE NO. 2

Certified that purchase of land required by private contract is not paraticable (*sic* practicable) woing (*sic* owing) to the reason that the land is required urgently in the interest of publics works and private negonations (*sic* negotiations) would result in abnormal delay for the execution of works of vital utility "Ghaziabad Vikas Area".

CERTIFICATE NO. 4

Certified that the land proposed to be acquired is under cultivation. I have satisfied myself that it is necessary to acquire the land under cultivation in performance to the banjer or uncultivated land available in the vicinity.

73. The certificates reveal that no effort was made by GDA to acquire the land through private negotiations and although, uncultivated land was available in the vicinity, it preferred to acquire land under cultivation. The Collector, Gautam Budh Nagar also enclosed a certificate giving justification for accepting the proposal of GDA for acquisition of land and after mentioning that GDA is ready to bear the expenses of acquisition and that the suitable land is not available in the vicinity, in the end, it mentions as follows:

> "इस भूमि का अन्य कोई प्रस्ताव अर्जन हेतु विचाराधीन नहीं है। परियोजना के महत्व को देखते हुए व दृष्टिगत रखते हुए इस प्रकरण में भूमि अर्जन अर्जन अधिनियम की धारा 4 व 6 के अन्तर्गत विज्ञप्तियां धारा 17(1) के प्राविधानों सहित जारी करने के लिए प्रस्ताव शासन को भेजा जाय।"

74. As already noted, the no objection certificate issued by Collector for recommending dispensation of inquiry under Section 5-A mentioned the following:

> "गाजियाबाद विकास प्राधिकरण की यह एक अत्यन्त महत्वपूर्ण योजना है जिसमें भूमि की तत्काल आवश्यकता है परियोजना व क्षेत्र के सुनियोजित विकास के महत्व को दृष्टिगत रखते हुए इस भू.अर्जन प्रकरण में अर्जन की कार्यवाही भूमि अर्जन अधिनियम की धारा 4 व 6 के साथ पठित धारा 17 के अन्तर्गत करने हेतु संस्तुति की जाती है।"
>
> This is a very important scheme of the Ghaziabad Development Authority, in which the land is required urgently. Keeping in view the project and the importance of planned development of the area, proceedings for acquisition of land, in this land acquisition case, are recommended to be taken u/s 4 and 6 of Land Acquisition Act read with Section 17."

75. Noting on the file of State Government, as noted above, is as follows:

> "13. प्रस्तावित भूमि का अर्जन की योजना में विलम्ब होने पर अनधिकृत निर्माण की संभावना है। प्रश्नगत योजना जनहित की है। अतः अर्जन हेतु भूमि अध्याप्ति 1894 की धारा.4 व 6 की विज्ञप्ति जारी कराने के लिए धारा.17 के प्राविधान लागू किया जाना आवश्यक है।"
>
> "13. There is likelihood of construction of unauthorised constructions in case of delay in acquisition of the proposed land. The scheme in question is for public welfare. Hence, in order to get notification for acquisition of land, issued u/s 4 and 6 of the Land Acquisition Act, 1894, it is necessary to invoke provisions of Section 17."

76. Thus, apart from apprehension of unauthorised constructions coming up over the land proposed to be acquired, in case inquiry

under Section 5-A was held, the only other reason being consistently mentioned was that the proposed scheme was in public interest and therefore, recourse to emergency powers was necessary.

77. No doubt, the scheme was conceived to meet the additional residential need of the general public. The decision of GDA to acquire land for meeting the residential need of the general public was definitely a public purpose and would legalise the action of GDA to go for compulsory acquisition under the Act, 1894. However, it was wrongly treated as sufficient ground for invoking the emergency powers under Section 17 of the Act. The respondents have overlooked various pronouncements of Supreme Court where time and again it has been clarified that mere existence of public purpose does not automatically justify the invocation of emergency powers under Section 17 of the Act. There was no material which could justify the dispensation of inquiry under Section 5-A of the Act. It is clear that the State Government was not even aware of the legal requirement of formation of opinion by it regarding existence of such urgency or unforeseen emergency, as would warrant dispensation of inquiry under Section 5-A of the Act. The scheme, as noted above, was for developing the area in a planned manner so that the need of residence of the general public was taken care of but as consistently held by the Supreme Court, in various judgments discussed above, the planning, execution and implementation of

such a scheme consume considerable time and the scheme was not such that it could not have brooked delay of even a few months likely to be consumed in deciding objections under Section 5-A of the Act.

78. It is noteworthy that although the scheme in question was approved by the Board of GDA on 29.06.2001 but it took more than three years to issue notification under Section 4 dated 16.10.2004 and again, more than thirteen months, to issue notification under Section 6 dated 28.11.2005. The long interval between the date of publication of two notifications in the official gazette, though not fatal per se, is undoubtedly a relevant factor, when considered along with other aspects. The State Government remained totally oblivious of the fact that it had invoked emergency powers under Section 17 and, in doing so, deprived the land owners of their valuable right to file objections under Section 5-A of the Act. Therefore, it was incumbent upon it to act with expedition and issue notification under Section 6 without delay.

79. The specific case of most of the petitioners is that they were having '*pakka*' constructions over the land included in the impugned notification and were carrying on various activities like running schools, colleges, hospitals and having their residences. They have also alleged that the constructions were either old or had been raised on basis of valid permission from GDA. Their valuable right to file

objection under Section 5-A was taken away as a result of wrongful invocation of Section 17 of the Act. They have, thus, been seriously prejudiced.

80. By a letter dated 23.11.2005, the Director, Land Acquisition Directorate, Board of Revenue, U.P., Lucknow reminded the State Government that the last date for issuance of notification under Section 6 is 30.11.2003. Consequently, the State Government was urged to act immediately and issue the relevant notification. It was only thereafter that the State Government awoke from its slumber and issued notification under Section 6 read with Section 17(1) on 28.11.2005. When calculated from the date of publication of the Section 4 notification in the official gazette, this was after more than thirteen months.

81. The present Scheme, which pertains the development of a residential colony under planned development programme, was not of such urgency that a few months' delay occasioned by the process of the objections under Section 5-A would have jeopardised the Scheme itself. As already observed, the time consumed in issuing Section 6 notification itself was sufficient to hold the enquiry. The State Government failed to distinguish between existence of public purpose and existence of real urgency to warrant dispensation of enquiry under Section 5-A of the Act. Consequently, applying the test laid down by the Supreme Court in **Zora Singh Vs. J.M.**

Tandon & others[29]**,** we are of the considered view that the formation of opinion by the State Government to invoke Section 17, albeit subjective, suffers from manifest error of law. We are, therefore, unable to uphold the dispensation of enquiry under Section 5-A of the Act.

THE FUTURE COURSE AND THE RELIEF :

82. The principal issue which now arises is whether the respondents can be permitted to proceed with the acquisition from the stage of enquiry under Section 5-A, and further, what relief the petitioners would be entitled to, in the facts and circumstances of the present case.

83. Indisputably, during the pendency of the writ petitions, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act, 2013') came into effect on 1st January, 2014. Section 114 of the Act, 2013 provides for repeal of the Land Acquisition Act, 1894. Section 114 is as follows:

> **114. Repeal and saving**.- (1) The Land Acquisition Act, 1894 (1 of 1894), is hereby repealed.
>
> (2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals."

29 AIR 1971 SC 1537

84. Section 6 of the General Clauses Act, 1897 reads as follows:

> **6. Effect of repeal**. - Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
>
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or Incurred under any enactment so repealed; or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;
>
> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced. and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

85. Section 24 of the Act, 2013 saves certain land acquisition proceedings initiated under the Land Acquisition Act, 1894 and the situations in which the proceedings would lapse. Section 24 of the Act, 2013 is as follows:

> "**24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—**(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), —
>
> > (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or
> >
> > (b) where an award under said section 11 has been made, then such proceedings shall continue under the

provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

86(i). The Constitution Bench of Supreme Court in **Indore Development Authority v. Manoharlal**[30]**,** explained the concept of lapse of acquisition proceedings under Section 24 of the Act, 2013 as follows:

95. Section 24 begins with a non obstante clause, overriding all other provisions of terms of Section 114 of the 2013 Act, the general application of Section 6 of the General Clauses Act. 1897. except otherwise provided in the Act, has been saved. Section 6(a) of the General Clauses Act, 1897 provides that unless a different intention appears, the repeal shall not revive anything not in force or existing at the time when the repeal has been made. The effect of the previous operation of any enactment so repealed or anything duly done or suffered thereunder is also saved by the provisions contained in Section 6(b). As per Section 6(c), the repeal shall not affect any right, privilege, obligation or liability acquired, accrued, or incurred.

96. Section 24(1)(a) of the 2013 Act read with the non obstante clause provides that in case of proceedings initiated under the 1894 Act the award had not been made under Section 11, then the provisions of the 2013 Act, relating to the determination of compensation would apply. However, the proceedings held earlier do not lapse. In terms of Section 24(1)(b), where award

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> under Section 11 is made, then such proceedings shall continue under the provisions of the 1894 Act. It contemplates that such pending proceedings, as on the date on which the 2013 Act came into force shall continue, and taken to their logical end. However, the exception to Section 24(1)(b) is provided in Section 24(2) in case of pending proceedings; in case where the award has been passed five years or more prior to the commencement of the 2013 Act, the physical possession of the land has not been taken, or the compensation has not been paid, the proceedings shall be deemed to have lapsed, and such proceedings cannot continue as per the provisions of Section 24(1)(b) of the 2013 Act.

86(ii). The Constitution Bench thereafter proceeded to examine as to whether the land acquisition proceedings initiated under the Act, 1894 would lapse only if both the conditions namely (i) physical possession of the land has not been taken and (ii) compensation has not been paid, exist simultaneously, or in the alternative. The Constitution Bench held that both the conditions should co-exist for lapse to take place. The said aspect, though not relevant for the purposes of the present case, is just being noted in order to complete the picture.

86(iii). It has been further held that for computing the period of five years under Section 24(2) of the Act, 2013, the period during which any interim order has remained in operation, has to be excluded. The relevant observations are as follows:

> "366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be

excluded in the computation of five years." (para 366.8)

87. The Constitution Bench judgement has been applied by the Supreme Court in its subsequent judgement in **Faizabad Ayodhya Development Authority Vs. Rajesh Kumar Pandey**[31]. In the said case, the notifications issued under Section 4 and Section 6 read with Section 17 of the Land Acquisition Act were under challenge by the land owners in writ petition before the High Court. The High Court granted interim stay restraining the Authority from taking over possession of the land. Therefore, the possession of the said land was not taken nor any award was made. The writ petition filed by the land owners was disposed of with direction to the State Government to consider their application for exemption under Section 48 of the Act. The said representation was rejected and, thereafter, another writ petition was filed before the High Court challenging the same. During pendency of the writ petition, the Act, 2013 came into force. It was submitted on behalf of land owners that as no award has been made under Section 11 of the Act, 1894, therefore, the provisions of Section 24(1) of the Act, 2013 would be attracted and the land owners shall be entitled to compensation determined under the provisions of the Act, 2013. The High Court allowed the writ petition and directed the respondents to determine compensation in terms of the provisions of Section 24(1) of the Act,

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2013. The order of High Court was subjected to challenge before the Supreme Court. The Supreme Court examined the issue as to whether in cases where award could not be declared under the Act, 1894 due to challenges to the acquisition proceedings or interim orders, the land owners could still claim compensation under the Act, 2013. It has been held that the land owners cannot take advantage of such interim orders. As soon as the obstacle is removed, award could be declared under the Act, 1894, by applying Section 114 of the Act, 2013 read with Section 6 of General Clauses Act, 1897. The relevant observations from the judgement are extracted below:

> "38. In view of the above and for the reasons stated above, it is observed as under:
>
> > It is concluded and held that in a case where on the date of commencement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, no award has been declared under Section 11 of the 1894 Act, due to the pendency of any proceedings and/or the interim stay granted by the Court, such landowners shall not be entitled to the compensation under Section 24(1) of the 2013 Act and they shall be entitled to the compensation only under the 1894 Act.
>
> 39. In view of the above discussion and for the reasons stated above and in view of our conclusion above, all these appeals are allowed. The impugned judgment(s) and order(s)1, 2, 3, 4 passed by the High Court are quashed and set aside. The appropriate authority(s) concerned to declare the award under Section 11 of the 1894 Act with respect to the lands in question and determine the compensation under the provisions of the 1894 Act by taking into consideration Section 114 of the 2013 Act read with Section 6 of the General Clauses Act, 1897, wherever applicable and the original landowners shall be paid the compensation accordingly, under the provisions of 1894 Act."

88. In the same judgement, the Supreme Court has also clarified that in cases where acquisition notification itself is quashed, occasion to declare award in future would not arise. The relevant observations are as follows:

> "In the case of Indore Development Authority (supra), even this Court applied the principle of restitution. It is observed that the principle of restitution is founded on the ideal of doing complete justice at the end of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. Applying the principle of restitution, it is further observed that no party could take advantage of a litigation. It is further observed and held that the principle of restitution is a statutory recognition of the rule of justice, equity and fair play. The court has inherent jurisdiction to order restitution so as to do complete justice. This is also on the principle that an unsuccessful litigant who had the benefit of an interim order in his favour cannot encash or take advantage of the same on the enforcement of the 2013 Act by initially stalling the acquisition process and later seeking a higher compensation under the provisions of the 2013 Act. We say so for the reason that if at the instance of a landowner, who has challenged the acquisition, an interim order has been passed by a Court is successful then the proceeding of acquisition or the acquisition notification would be quashed. Then there would be no occasion to determine any compensation. But on the other hand, if a landowner, who has the benefit of an interim order in his favour whilst a challenge is made to the acquisition, is unsuccessful, he cannot then contend that he must be paid compensation under the provision of the 2013 Act on its enforcement, whereas a landowner, who did not have the benefit of any interim order is paid compensation determined under the provisions of the 1894 Act, which is lesser than what would be computed under the 2013 Act."
>
> (emphasis supplied)

89. It is admitted that in respect of major part of land involved in the present batch of petitions, even awards have not been made, though stated to be on account of the interim order(s) operating in various cases. The challenge to the acquisition has also succeeded and the effect of which, as held, is that at present, there exists only the notification under Section 4 of the Land Acquisition Act, 1894. A Section 4 notification is only a preliminary notification of the intent that the subject land is needed for the public purpose specified therein. It only authorizes the government to enter upon the land and do certain acts necessary to ascertain whether the land is adapted for the purpose for which it is proposed to be acquired. The same is to be followed by enquiry under Section 5-A and then only if the respondent would feel satisfied, considering the report, if any, made under Section 5-A, sub-section (2), a final declaration of the fact that the land is needed for public purpose could be made under Section 6. Undoubtedly, at this stage, Section 24(1)(b) of the Act, 2013 would not apply. Even if the period of interim orders operating in the writ petitions is excluded, as the challenge has succeeded, the respondents would also not get the benefit of the judgement of the Supreme Court in **Faizabad-Ayodhya Development Authority** (ibid).

90. Here, it is relevant to deal with the submission of learned Advocate General that the respondents have already (i) invested

huge sum of money in constructing roads, laying down sewer lines and in developing the acquired land; (ii) taken possession of major part of the acquired land; and (iii) determined and paid compensation to majority of the tenure holders, therefore, striking down of the acquisition proceedings would adversely affect the planned development of the area. In larger public interest, the acquisition, as a whole, should not be quashed and the respondents be permitted to retain the acquired land. To appreciate the submission, it is worthwhile to note the pleadings set out in some of the affidavits filed on behalf of the respondents.

91. It is stated in the supplementary counter-affidavit filed on behalf of GDA dated 28.03.2018 (Writ Petition No. 21565 of 2013: Ratan Singh vs. State of U.P.) that GDA has invested Rs. 1339.09 lakhs for construction of roads and Rs. 248.13 lakhs for laying down sever line, nali and roads, i.e. total of Rs. 1587.22 lakhs in the Indrapuram Extension Scheme developed over the acquired land. In support, report of Executive Engineer (Incharge), Zone 6, GDA dated 28.10.2017 has been filed.

92. GDA has also filed a supplementary counter-affidavit dated 06.03.2021 (Writ No.21565 of 2013: Ratan Singh and Others vs. State of U.P. and Others) and therein also it has specifically pleaded that a large area of acquired land has already been developed by it as per Master Plan, 2021 in carving out roads of widths, 30 mtrs., 24

mtrs., 18 mtrs., 12 mtrs. and 9 mtrs., and allocation for community services/facilities such as school/police station/chowki/ park/hospital/ fire station etc. It is also stated that the development, as per original plan, could not be carried out in full but planned development of undisputed land, of which possession was taken, has been carried out. The amount allegedly spent in this regard is Rs.248.13 lacs.

93. In a more recent affidavit dated 5 May 2025 filed on behalf of the respondents (Writ Petition No.4986 of 2005: Hatam Singh and others vs. State of U.P. through Secretary Housing and Urban Planning and another), further facts regarding taking over of possession of some more land and of declaring awards, have been disclosed. According to the respondents, on 08.05.2015, they have made award of 2.0692 hectares of more land, of which possession is stated to have been taken on 15.12.2014, and 4.067 hectares on 30.12.2023, of which possession was taken on 19.03.2024. Thus, it is stated that the Government has till now paid Rs.1,20,47,22,936.80 towards acquisition cost and Rs.19,93,55,597.56 towards development of land, in all Rs.140,40,78,533.36.

94. In paragraph 16 of the supplementary counter-affidavit dated 06.03.2021 (Writ Petition No. 21565 of 2013 : Ratan Singh and others vs. State of U.P. and others), it is stated that, in all, possession of 135.5630 acre out of the total acquired land admeasuring

229.3828 acre was handed over to the acquiring body on 14.09.2006, 21.07.2010, 20.10.2011, 31.01.2012, 12.06.2013 and 15.12.2014. A map giving details of acquired land, land left out under Section 48 of the Land Acquisition Act, land left out in favour of housing societies, and also land area 35.8527 hectares (88.04 Acre), of which possession is admitted to be not with GDA, has been annexed alongwith the said affidavit. The aforesaid details have also been given in a tabular chart in paragraph 16, which, for ease of reference, is reproduced below:

> "16. That after declaration, the possession of 135.5630 Acre (54.8616 Hectare) out of the total acquired land admeasuring 229.3828 Acre of land was handed over to the acquiring body on 14.09.2006, 21.07.2010, 20.10.2011, 31.01.2012, 12.06.2013, 15.12.2014 by the District Magistrate. The total land area that was proposed to be acquired by the acquiring authority is detailed herein.
>
> | | |
> |---|---|
> | Land proposed to be acquired. | 229.5390 Acre (92.893 Hectare) |
> | Land on which possession was taken | 135.5630 Acre (54.8616 Hectare) |
> | Land on which possession was not taken and subsequently for which de-notification proposal was sent to Government. | 88.04 Acre (35.8527 Hectare) |
> | Land released under Section 48 of the Land Acquisition Act. | 5.4899 Acre (2.2217 Hectare) |
>
> Breakup of total land area of 135.5630 Acre (54.8616 Hectare) on which possession was taken is detailed in the table given below:
>
> | | | |
> |---|---|---|
> | 1. | Particulars of land of which possession was taken. | 135.5630 Acre (54.8616 Hectare) |

2.	Land was acquired by means of Karar Agreement.	22.6101 Acre (9.15 Hectare)
3.	Land taken under possession pursuant to Government Order dated 22.10.2002 from housing societies.	9.2666 Acre (3.7501 Hectare)
4.	Land given to societies pursuant to Government Order dated 22.10.2002.	3.014 Acre (1.220 Hectare)
5.	Total Column 2, 3 and 4 (undisputed land)	34.8912 Acre (14.12 Hectare)
6.	Total land on which possession was taken but is subjudice under these 38 writ petitions.	55.8492 Acre (22.6019 Hectare)
7.	Remaining land after subtracting the undisputed land [Column 1 - (Column 5+6)] from the total land of 54.8616 Hectare.	44.80 Acre (18.1397 Hectare)

A true copy of the map containing the details in respect of acquired land, land left out under Section 48 of the Land Acquisition Act as well as land left out to various housing societies and also containing an area of 35 Hectare which was not handed over to the GDA is being filed herewith and marked as Annexure No.SA9 to this Affidavit."

95. Paragraphs 17 and 18 of the said affidavit, which are also relevant, are reproduced below:

"17. That it is humbly pointed out here that out of total land of 54.8616 Hectare, an area admeasuring 22.6019 Hectare (55.8492 Acre) has been in dispute by means of various writ petitions filed before the Hon'ble High Court and interim orders have been granted therein.

18. That it is further humbly submitted that an area of land admeasuring approximate 18.1397 Hectare (44.80 Acre of land) though being in possession, but is scattered all over and not contiguous pieces of land, therefore, could not be used."

96. In paragraphs 38, 39 and 40 of the supplementary counter affidavit dated 29.3.2018 filed on behalf of the State-respondents (Writ Petition No. 21565 of 2013: Ratan Singh and others vs. State of U.P. and others), it is asserted as follows: -

> 38. That, in addition to above, it is further submitted that out of total 229.5386 acre (92.893 hectare) acquired land, possession of 136.3765 acre (55.191 hectare) land was taken over and then handed over to the GDA. The award, in respect of 136.3765 acre (55.191 hectare), was declared on 21.04.2012, 20.12.2013 and 08.05.2015. Compensation of total 6.054 hectare (18.4 acre) land @ of Rs. 1000/- per sqr. meter totaling 7,45,75,756.00 was received by approximately 80 farmers under Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997. In addition to above, ex-gratia amount of Rs.100/- per square meter was also paid to the tenure holders who had received the compensation under agreement. Compensation of remaining 95 acre of land was determined @ of Rs. 312/- per sqr. meter, totaling of Rs. 25,67,01,727.00. True photocopy of awards dated 21.04.2012, 20.12.2013 and 08.05.2015 are being collectively filed herewith and marked as ANNEXURE NO. 13 to this affidavit.
>
> 39. That, the awarded amount (remaining compensation), which was not received by the affected tenure holders i.e. Rs. 2,04,805,629.00 was later on deposited in District Court, Gautam Budh Nagar vide letter dated 14.02.2014. True photocopy of letter dated 14.02.2014 is being filed herewith and marked as ANNEXURE NO. 14 to this affidavit.
>
> 40. That, the petitioners of Writ Petition No. 21562 of 2013 (Sunil Sachdeva vs. State of U.P. and others) have received compensation on different dates after award and as such the writ petitions, on their behalf, challenging the acquisition, is not maintainable, the details are as under:

Sl No.	**Name of Tenure Holder**	**Amount of Compensation**	**Date of receiving**
1	Shri Sunil Sachdeva	13,06,666.00	09.02.2011
2	Shri Harish Sachdeva	13,06,667.00	09.02.2011
3	Shri Janak Sachdeva	13,06,667.00	09.02.2011
4	Shri Naresh Chand	19,60,000.00	04.11.2010
5	Shri Jagdish	19,60,000.00	18.11.2010
6	Shri Sita Ram		
7	Shri Sripal		

8	Shri Satendra	22,13,750.00	07.04.2011
9	Shri Rajrani		
10	Shri Rajpal	8,57,389.00	17.06.2010
11	Shri Veerpal	8,57,389.00	17.06.2010
12	Shri Ranveer	8,57,389.00	17.06.2010

97. In paragraphs 19 to 23 of the supplementary counter-affidavit dated 25.7.2023 filed on behalf of respondent no. 1, i.e. State of U.P., in Hatam Singh and others vs. State of U.P., the pleadings regarding possession and date of awards are as follows:-

> 19. That it is further submitted that out of total area of 229.8930 Acre of acquired land, possession over 135.56:36 Acre of land was taken. The award was declared on 21.04.2012, 20.12.2013, 20.10.2011, 30.01.2012 12.06.2013 respectively of land of which possession was taken.
> 20. That it is further submitted that possession over major portion of the land has been taken and award has also been declared.
> 21. That it is pertinent to point out that the petitioners in this batch of 34 petitions have been granted stay orders on different dates and therefore possession over 75.2106 Acres of acquired land could not be taken due to the stay orders passed by this Hon'ble Court.
> 22. That it is pertinent to state that in the both of these 34 writ petitions, a total area admeasuring 126.6488 Acers of land is disputed, a breakup of 126.6488 Acres of land is as follows:-
>
> a. Possession over an areas of 51.4382 Acres of land was taken however, stay order was passed after the possession was taken and passing of award.
>
> b. Stay order was passed over area admeasuring 75.2106 area even before possession could be taken (hence no award could be declared).
>
> Hence, 51.4382 Acres + 75.2106 Acres total 126.6488 Acres remain disputed in these 34 writ petitions.
>
> 23. That development over 51.4382 Acers of land could not be carried out because of the stay orders whereas award was declared and possession was taken.

98. In paragraph 6 of the the second supplementary counter-affidavit dated 20.08.2019 filed by GDA in Writ Petition No. 21565

of 2013 (Ratan Singh and others vs. State of U.P. and others), it is admitted that possession of 35.8527 hectare land out of total 92.893 hectare acquired land, has neither been taken nor award has been declared. It has further been disclosed in the said affidavit that in respect of land belonging to Ishan International Education Society, possession of 2.0692 hectares of land (Plot Nos. 314/0-10-12, 329/2-8-3, 330/0-17-0, 331/0-14-0, 332/0-18-0, 333/1-17-0, 334/0-6-0 and Plot No. 335/0-9-0), was taken on 15.12.2014 and award was declared on 08.05.2015 under the provisions of the Act, 2013 and compensation was awarded at the rate of Rs. 1,000 + Rs. 100 (ex-gratia), taking date of Section 4 as the relevant date. The said award was challenged in Writ Petition No. 60276 of 2015 and vide order dated 9.5.2017, this Court directed for re-determination of the compensation amount as per provisions of New Act No. 30 of 2013 at the rate prevalent as on 01.01.2014. The aforesaid order dated 9.5.2017 was affirmed by the Supreme Court vide order dated 19.07.2017 in Special Leave Petition No.17660 of 2017 filed by GDA. The Review Application No.2765 of 2017 was dismissed on 05.12.2017.

99. Another petition by Smt. Sudha Bhalla and 2 Others vs. State of U.P. and 3 Others, being Writ-C No.16165 of 2017 arising out of the same acquisition proceedings, was disposed of by order dated 09.08.2017, relying on the order in Ishan International Education

Society, with direction to make award under the New Act treating 01.01.2014 as the date for determining the market value of the acquired land. Against the said order, GDA filed SLP before the Supreme Court. It got converted into Civil Appeal No.19839 of 2017. Ultimately, it was also dismissed by order dated 11.05.2023, which is as follows: -

> "1. Heard learned counsel for the parties.
>
> 2. Shri Ravindra Kumar, learned senior counsel appearing for the appellant submits that in view of Increase in prices, the Ghaziabad Development Authority (in short "GDA") may not be In a position to pay the compensation as directed by the High Court.
>
> 3. We are not inclined to Interfere with the Impugned Judgment and order passed by the High Court. This civil appeal is dismissed accordingly.
>
> 4. However, It is clarified that since the order Impugned has been passed on the concession made by the learned counsel for the GDA, the same shall not 2 be treated as precedent in any other matter(s).
>
> 5. So far as the contention of the appellant that it may not be in a position to pay the compensation, it is always free for the GDA to release the land in the event GDA Is not in a position to pay the compensation.
>
> 6. Pending applications, if any, stand disposed of."

Although, the Supreme Court clarified that the aforesaid order would not be treated as a precedent but the fact which needs to be noticed is that in the said case also, award was made on 30.12.2023, treating the relevant date for determining the market value as 01.01.2014.

100. While the above proceedings were pending, GDA constituted a high level committee to assess the consequences of making award

under the new Act and to examine whether it would be viable to proceed with the acquisition or not. The said Committee in its report dated 16.5.2019 estimated the compensation amount at Rs. 848.43 crores apart from 12% additional compensation, 100% solatium, 9% interest for one year from date of possession and thereafter 15% interest, thus totalling around Rs. 3200 crores. The GDA, having regard to the said report, in its 153rd Board Meeting dated 25.6.2019, decided not to go ahead with the acquisition and for de-notification of 35.8527 hectares of land. A formal proposal for de-notification of 94 gatas, area 35.8527 hectare, was sent to the District Magistrate by Vice Chairman, GDA on 6.7.2019. The District Collector forwarded the proposal for de-notification to the Government vide letter dated 7.8.2019.

101. On 03.09.2022, while the proposal for de-notification was pending before the State Government, the GDA took a somersault and placing reliance on judgement of Supreme Court dated 20.05.2022 in **Faizabad Ayodhya Development Authority** (ibid), requested the State Government not to go ahead with the proposal for de-notification. The GDA took the stand that it could not declare award in view of interim orders passed in various writ petitions of the land owners including that by Hatam Singh and Others (Writ-C No.4986 of 2005) and in case the decision of this court goes in its favour, it would make the awards, treating the date of issuance of

notification under Section 4 as the relevant date, as per law laid down by Supreme Court in **Faizabad Ayodhya Development Authority** (ibid). This, according to GDA, would be cost viable, and also beneficial to it from the financidal angle. Consequently, on 6th September, 2022, the State Government returned the proposal for de-notification of the land to GDA.

102. Although, the proposal for de-notification came to be dropped in the aforesaid background but it remains undisputed that award was made in respect of the land of Ishan International Education Society for area measuring 2.0240 hectare (5.001 acre) on 06.05.2022 and in case of Sudha Bhalla in respect of area measuring 4.0678 hectare on 30.12.2023, treating the relevant date for determining compensation as 01.01.2014.

103. In paragraph 30 of the supplementary counter-affidavit dated 05.05.2025 in Writ Petition No.4986 of 2005 (Hatam Singh and and others vs. State of U.P. through Secretary Housing and Urban Planning and another), it is stated that actual area involved in 33 writ petitions is 39.2708 hectares, out of which, the respondents claimed to be in possession of 17.2857 hectares. It is admitted that possession of 21.9851 hectares was still not with the respondents. An affidavit, in rebuttal, (Supplementary Rejoinder Affidavit) has been filed by the petitioners dated 6th May, 2025 in which emphasis has been laid on the fact that GDA itself has proposed for de-

notification of 48.735% of the total area under acquisition and it proves that there was no urgency and the entire acquisition was malicious. It has been pointed out that GDA in its proposal for de-notification had also included part of Khasra No.484M and several plots qua which Writ Petition No.76400 of 2005 filed by Lok Hith Sahkari Awas Samiti Ltd. and others was dismissed and it goes to show that GDA is not in possession of even the said land.

104. We notice variance in the stand taken in different affidavits filed by the respondents from time to time in respect of area of land of which possession was allegedly taken. Most of the petitioners have refuted the stand taken by GDA in relation to the possession and have contented that the possession was taken only on papers. It is submitted that stay orders were in operation in the writ-petition filed by the petitioners and thus, it was not possible to take possession.

105. Admittedly, after the judgement of this court dated 09.05.2017 in Writ Petition No. 60276 of 2015 (Ishan International Education Society vs. State of U.P. and Others), upheld by Supreme Court in SLP No.17660 of 2017 vide order dated 19.07.2017, for determination of compensation, as per provisions of new Act, the GDA itself constituted a Committee to examine the impact of the same. The said Committee, as noted above, has arrived at a definite finding that possession of 35.8527 Hectare was either not taken or

actual possession is still not with GDA. This is also explicitly stated in the letter of Vice Chairman, GDA dated 06.07.2019, by which proposal for de-notification of the said area, was sent to the District Magistrate. Thus, we feel more inclined and safer to rely on the findings of the own Committee of GDA instead of the vacillating stand taken by it in different affidavits. Here, we also wish to re-emphasise that proposal for de-notification was withdrawn vide letter of Vice Chairman, GDA, relying solely on the judgment of Supreme Court dated 20.5.2022 in **Faizabad Ayodhya Development Authority** (ibid) in anticipation that challenge to the acquisition might fail. However, since the dispensation of enquiry under Section 5-A of the Act has been held to be illegal, the respondents even cannot be given benefit of the judgment of the Supreme Court in **Faizabad Ayodhya Development Authority** (ibid) and proceed with the acquisition.

106. Having held so, we also cannot ignore the fact that large number of the land owners, representing more than half of the acquired land, have not challenge the acquisition proceedings. Consequently, the respondents have succeeded in completing the acquisition proceedings qua the said part of the land. They have carried out development over the same by laying roads, constructing sewer lines, and developing other public amenities. Some part of the acquired land has been allotted to third parties for developing

housing colonies and other uses and thus third party interests have also come into existence.

107. The residential scheme developed over the acquired land in the name of Indrapuram Extension is now a prime residential area and is surrounded on all sides by dense abadi. The need of developing the remaining area in a planned manner as per master plan cannot be doubted. At this stage, if the acquisition is quashed in its entirety, it will definitely have serious adverse consequences. Apart from haphazard growth, the further development of public amenities like roads, sewer lines, parks etc. would get hampered. Thus, having regard to overarching public interest, we consider it appropriate to give option to the respondents to retain the land, subject to conditions, as would balance individual interests also.

108. In **Sahara India Commercial Corporation Limited and others vs. State of Uttar Pradesh and others**[32], the Supreme Court dealt with a similar fact situation where dispensation of enquiry under Section 5-A was held to be invalid. Although, the same was held to have vitiated the acquisition as a whole, but considering the fact that a fairly large portion of the acquired land had already been put to use and the land of the land owners before the court continued to be largely vacant on account of interim orders passed in their favour, the relief was moulded to balance the interest of the land owners and public interest. It was provided as follows: -

32 (2017) 11 SCC 339

"9. From the discussions that have preceded, the conclusion is obvious. The invocation of the urgency clause is invalid and the notification under Section 6 issued without holding the enquiry/hearing of objections under Section 5-A of the Act would not be justified and the acquisition proceedings as a whole would be open for interference.

10. The next question that confronts the Court is the relief that should be granted in the present cases. Ordinarily, in the normal course, interference with the acquisition proceedings would result in a return to the status prior to the commencement of the acquisition proceedings obliging the acquiring authority to return the land to the landowners. However, from the materials placed before us it appears that the purpose for which the land was acquired has been implemented and on parts of the land, constructions under different housing and other schemes have come up. While there is a controversy with regard to the extent of the development that has taken place, what is reasonably certain is that a fairly large portion of the land has been put to use for the purposes for which the same was acquired. What, however, is clear that insofar as the land of the appellants is concerned the same continue to be largely vacant on account of the interim orders passed by the Court. In such a situation, we are of the view that even though the impugned acquisition has been found to be legally fragile, requiring the acquiring authority to return the land to the landowners, at this stage, would have the effect of jeopardising the housing and other projects which either have been completed or have reached completion. This would be contrary to public interest.

11. Therefore, we are of the view that in the totality of the facts of the case we should mould the relief in the following manner:

11.1 Though this Court is interfering with the acquisition proceedings as a whole, yet it directs that there will be no obligation on the part of the acquiring Authority to return any part of the land to any of the landowners. In other words, the acquiring Authority would have the option to retain entire of the land acquired by the notifications in question. In such an event, only in respect of the land of the appellants before this Court [stated to be 76 in number and the area involved 281 acres, approximately] the date of the present order will be deemed to be the date of a fresh notification for acquisition of the aforesaid land of the appellants before this Court.

11.2 We repeat to make it clear that for the rest of the land acquired and in respect of the landowner who may have received any part of the compensation the aforesaid directions would have no application. The compensation to be determined on the basis of the deemed notification, as directed, will be in accordance with the provisions of the Right to Fair Compensation and Transparency in

> Land Acquisition, Rehabilitation and Resettlement Act, 2013 and claims of compensation for constructions that may have come up on the acquired land prior to the dates of original Notifications (16th October, 2004 and 11th November, 2004) will also be considered by the Collector on their own merits."

109. A somewhat similar situation was again subject matter of consideration by the Supreme Court in **Noida Industrial Development Authority v. Ravindra Kumar**[33] wherein, the High Court found the invocation of urgency power under Section 17 of the Act, 1894 to be illegal. However, the High Court did not quash and set aside the declaration made under Section 6 of the 1894 Act and the awards. The High Court held that for balancing individual rights with the public interests, the relief should be moulded for the reason that substantial development work had already been carried out on the acquired land. Therefore, the High Court directed that:

> "..... those land owners/persons interested who have not accepted the compensation as per Karar Niyamawali should be paid compensation payable in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the 2013 Act'). The High Court further directed that the market value as per the provisions of the 2013 Act shall be determined on the date of the judgment. However, the High Court held that those who have accepted the compensation by an agreement under the Karar Niyamawali were not entitled to any relief."

Before the Supreme Court, the main contention of the State was that most of the land owners have accepted the compensation and only few of the land owners had filed writ petitions very belatedly, consequently, issuing a direction to pay compensation as per

33 2022 (6) ADJ 501 (SC)

provisions of 2013 Act by taking the market value as on the date of judgment of the High Court was completely illegal. The land owners who had accepted compensation under Karar Niyamawali and were not granted higher compensation as per the 2013 Act challenged the distinction made by the High Court between them and those who had not accepted the compensation on ground of discrimination. The Supreme Court repelled the contentions of both the acquiring body and the land owners. The Supreme Court observed that the High Court rightly moulded the relief for balancing the private interests of the land owners with the public interests and rightfully did not direct for enhanced compensation to those who had accepted the compensation under the Karar Niyamawali. The relevant observations are quoted for ready reference:

> "11. The first question which arises for our consideration is whether the High Court committed an error by not setting aside the acquisition after recording a finding that the orders by which sub-section (1) and sub-section (4) of Section 17 of the 1894 Act were invoked were illegal. We may note here that after invoking the urgency clause and dispensing with an enquiry under Section 5A of the 1894 Act, Section 6 declaration was issued on 17th March 2008. All the writ petitions filed by the owners were belatedly filed after more than 3 to 4 years from the date of declaration under Section 6. It is true that the High Court was right in holding that the urgency clause could not have been invoked in the facts of the case. However, a finding of fact has been recorded by the High Court that after the possession of the acquired land was handed over to the acquiring body, the same has been developed and allotted to third parties. A very large area of 108.233 hectares owned by the various individuals was acquired. However, only 11 persons claiming to be the land owners belatedly filed writ petitions. Taking note of these facts, the High Court, for balancing the private interests of the land owners with the public interest, declined to quash the acquisition proceedings. The High Court passed an order directing that the compensation payable shall be in terms of the provisions of the 2013 Act on the date of its judgment.

> Writ jurisdiction under Article 226 of the Constitution of India is always discretionary. It is an equitable remedy. It is not necessary for the High Court to correct each and every illegality. If the correction of illegality is likely to have unjust results, High Court would normally refuse to exercise its jurisdiction under Article 226. While maintaining the acquisition proceedings, the High Court granted a substantial relief to the land owners by directing payment of compensation under the 2013 Act which is higher than the compensation payable under the 1894 Act. This approach cannot be faulted."

110. In **Hamid Ali Khan (Dead) through Legal Representatives and Another vs. State of U.P. and Others**[34], the dispensation of enquiry under Section 5-A of the Act was held to be illegal. The Supreme Court taking into consideration, the fact that the initial notification under Section 4 read with Section 17 was issued long back on 08.10.2004 and the matter remained pending with interim order in operation, held that it would not be proper to remit the matter for enquiry under Section 5-A. In the said case, as the land was not found to be situated in the middle of the Scheme, therefore, the entire acquisition was quashed. The relevant observations are as follows: -

> "61. We would therefore think that in the facts of this case, having regard to the nature of the scheme, the delay with which section 6 declaration was issued, possession taken and the nature of the material on the basis of which the proposal was processed, the appellants are justified in contending that the notification under 17(4) dispensing with the inquiry under Section 5A was unjustified.
>
> 62. We may notice another aspect. This appeal arises from the order passed by the High Court in the year 2000. While issuing notice, this Court in the SLP stage ordered status quo as on 6.11.2009 be maintained. Thereafter, the leave was granted on 27.1.2012. The interim order was however directed to continue. It

34 (2021) 20 SCC 65

> is after nearly 12 years that the case is finally being disposed of. In the meantime, the Land Acquisition Act was repealed and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has taken its place. Therefore, there is no question of the matter being considered for an inquiry being held under section 5A. We have also noted that there is no denial of the allegation in the writ petition about the lie of the property, viz., it not being in the middle of the scheme area.
>
> 63. The appeal is allowed. The impugned judgment is set aside and the writ petition filed by the appellants shall stand allowed and the impugned notifications and proceedings based on the same shall stand quashed. The property shall be returned back to the appellants. This will be without prejudice to the rights/powers available to the respondents under law."

111. Having regard to the facts of the present case and the precedents noted above, we prefer to follow the course adopted by the Supreme Court in **Sahara India** and **Noida Industrial Development Authority vs. Ravindra Kumar** and instead of quashing the entire acquisition, give option to the respondents to retain any land subject to payment of a higher amount as compensation.

112. At this stage, the objection of learned Advocate General in respect of delay and laches on part of some of the writ petitioners in challenging the acquisition deserves to be noted. It is submitted that the fence-sitters are not entitled to any relief and the writ petitions filed by them are liable to be dismissed. In support of the submission, he has placed reliance on a Constitutional Bench judgement of Supreme Court in **Aflatoon vs. Lt. Governor of Delhi and Others**[35]. In the said case, notification under Section 6 of the

35 (1975) 4 SCC 285

Land Acquisition Act was issued in the year 1966. Thereafter, in 1970, notices were issued to the land owners under Section 9(1) of the Act, requiring them to state their objections, if any, to the assessment of compensation. At this stage, the writ petitions were filed alleging that the compensation awarded was wholly inadequate with reference to the market value of the property on the date when the land owners are to be deprived of their possession of the property. It has been held that the land owners who had permitted the acquisition proceedings to continue unchallenged for a considerable period, would be treated to have acquiesced in the same and waived their rights to challenge the notifications on the grounds available to them when the notifications were published. The relevant observations are as follows: -

> "11.... To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners."

113. In **Municipal Corpn. of Greater Bombay v. Industrial Development Investment Co. (P) Ltd.**, this Court observed as under:

> "19.... If the interested person allows the grass to grow under his feet by allowing the acquisition proceedings to go on and reach its terminus in the award and possession is taken in furtherance thereof and vested in the State free from all encumbrances, the slumbering interested person would be told

> off the gates of the Court that his grievance should not be entertained.…
>
> 29.... when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications."

114. Similar view has been reiterated in **State of Rajasthan v. D.R. Laxmi**, wherein this Court has held that even the void proceedings need not be set at naught if the party has not approached the court within reasonable time, as judicial review is not permissible at a belated stage. In the said case, the acquisition notifications were challenged after passing of the award. It was held as under :-

> "9.... Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of laches. It is thus, well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications...."

115. Undoubtedly, some of the petitions have been filed with delay. However, in view of interim orders passed in the writ petitions, it is admitted by the respondents that the acquisition proceedings were kept in abeyance. Even, award qua the said land was not declared. At one stage, the respondents had themselves recommended for de-notification of the major part of land involved in the present batch of petitions. Therefore, except in cases where any award has been made prior to filing of the writ petition or any compensation has been

paid, we do not consider it appropriate to draw any distinction among the land owners. We take this view while being fully conscious of the legal position relating to belated challenge to any acquisition, in view of the peculiar facts and circumstances of the present case.

FINAL DIRECTIONS :

116. Thus, we direct as follows:

(a) It shall be open to the respondents to retain any part of the land in dispute in the present batch of petitions. In respect of the said part of the land, the relevant date for determining the compensation would be deemed to be 01.01.2014, the date of enforcement of the Act, 2013.

(b) If the Authority needs to retain any land, in terms of the option, it shall notify the same by issuing a public notice at least in two newspapers, one in English and other in Hindi, having wide circulation in the area within one month from today. The land owners shall be at liberty to file objection on the aspect of compensation, if any, within a further period of one month from the date of issuance of notice and thereafter, the Authority shall proceed to declare award considering the objections within next three months in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(c) Where any award is made, as above, it shall be subject to the right and remedies available under the Act, 2013.

117. For any land for which option is not exercised, by declaration of award in terms of the instant order, the acquisition would stand quashed and the land will revert to the owners free from any encumbrances created over it by the respondents.

118. Before parting, we clarify that we have deliberately chosen to confine ourselves to larger issues involved in the case. In the event, the respondents decide to retain any land, the aggrieved persons will be at liberty to raise objections, as permissible under law, in course of the proceedings for determination of compensation, and the same shall be considered by the competent authority, in accordance with law.

119. The benefit of the present order will remain confined to only those land owners, who are before this Court, subject to the following exceptions:

(i) those who have received compensation under Karar Niyamawali;

(ii) those who have received compensation in terms of the awards made from time to time; and

(iii) those who have transferred their land after issuance of Notification under Section 4 of the Act.

120. The writ petitions falling under any of the exceptions shall stand **dismissed** while the other writ petitions shall stand **disposed of** in terms of the above directions.

121. No order as to costs.

(Anish Kumar Gupta,J.) (Manoj Kumar Gupta,J.)

October 17, 2025
Mukesh/Jaideep/Ankit/-