NEUTRAL CITATION NO. 2024:MPHC-IND:26304

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 19th SEPTEMBER, 2024

WRIT APPEAL No. 769 of 2006

OMPRAKASH AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri V.K. Jain, Senior Advocate with Shri Rajeev Kumar Jain, learned counsel for the appellants.

Ms Archana Kher – Addnl. Advocate General for the respondent(s) no.1 to 4/State.

Shri Kushagra Singh – learned counsel for the respondent no.5[appeared through V.C.]

WITH

WRIT APPEAL No. 762 of 2006

RAMESH AND OTHERS

Versus

THE STATE OF M.P. AND OTHERS

NEUTRAL CITATION NO. 2024:MPHC-IND:26304

Appearance:

Shri V.K. Jain, Senior Advocate with Shri Rajeev Kumar Jain, learned counsel for the appellants.

Ms Archana Kher – Addnl. Advocate General for the respondent(s) no.1 to 4/State.

Shri Kushagra Singh – learned counsel for the respondent no.6[appeared through V.C.]

Reserved on : 03.04.2024

Pronounced on : 19.09.2024

JUDGMENT

Per: ***Justice Sushrut Arvind Dharmadhikari***

Heard finally with the consent of both the parties.

Regard being had to the similitude of the controversy involved in the aforesaid appeals, they are being heard analogously and decided by this singular order.

For the sake of convenience, facts of W.A. No.769 of 2006 are being taken for consideration.

The present writ appeal under Section 2(1) of Madhya Pradesh Uccha Nyayalaya Khandpeeth Ko Appeal Adhiniyam, 2005[earlier registered as Letter Patent Appeal No.181 of 1996] has been filed assailing the judgment dated 04.10.1996 passed in W.P. No. 1824/1994 by which the petition filed by the appellant herein was dismissed.

2. Brief facts of the case are that appellants herein have filed writ

petition challenging the notification issued by the respondent/State under Section 4(1) and 6 of the Land Acquisition Act, 1894(referred to as the Act of 1894' hereinafter) with regarding to acquisition of land belonging to the appellants situated at village Sonvaya Tehsil Mhow Distt. Indore. They were holding the bhoomi swami rights of the said land and were earning their livelihood by cultivating the said land.

3. Respondent/State started proceedings for acquisition of agricultural land of village Sonvaya (including parcels of land belonging to appellants in W.A. No. 769/2006)of total area of 29.970 hectares and also the parcels of land(belonging to appellants in W.A. No. 762/2006) of Village Baislaya admeasuring total area of 33.009 hectares under the Act of 1894. Notification u/S 4 of the Act of 1894 was duly published in the gazzette dated 28.10.1994 followed by another notification u/S 6 of the Act of 1894 dated 04.11.1994. Thereafter, notices were issued to the appellants. u/S 9 of the Act of 1894. Appellants are still in possession of the land. The parcels of land in question was acquired by the Land Acquisition Officer on 11.10.1994 on the request made by respondent no. 5 i.e. the Madhya Pradesh AKVN for the purpose of establishing an industrial area wherein the respondent no. 5 had made request for invoking the urgency clause u/S 17(1) of the Act of 1894. After receiving the proposal by respondent no.5, the LAO forwarded it to the Collector for approving the same and thereafter referring the same to the Commissioner, Indore Division seeking his approval for the use of Urgency clause u/S 17(1) of the Act of 1894 in view of the fact that the total area of land to be acquired exceeded 100 acres. After receiving approval from the Commissioner, the Land Acquisition

Officer prepared draft notification u/S 4 and 17(1) of the Act of 1894 and submitted the same to the Collector and thereafter the same were issued and published in the gazzette mentioning the purpose of establishment of an industrial area and it is also mentioned that provisions of Section 5A of the Act shall not apply since in the opinion of State Government, the provisions of Section 17(1) of the Act were applicable to the lands proposed to be acquired.

4. Learned counsel for the appellants while arguing has put forth the following objections:

(i) Utter violation of mandatory provisions: There is nothing found on record to show that any steps whatsoever were taken at any point of time to comply with the mandatory requirement of law .

(ii) Notification u/S 4 & 6 and notice u/S 9 are non-est - Sustenance of notification under Section 4 of the Act itself is doubtful as it was not at all published in any manner at any convenient place in the locality. Non-compliance of the above mandatory provisions of law stands further established by inquiries made in this connection by the appellants from Sarpanch of the Gram Panchayat and Station House Officer of the near police station, Kishanganj. Such utter non-compliance of the mandatory requirements of law has the legal effect of making the above notification under Section 4 and 6 of the Act and No steps have been taken by the LAO to publish notices issued u/S 9 of the Act and, therefore also the notices issued under Section 9 of the Act are non-void and non-est.

(iii) Power of Collector u/S 4 of the Act of 1894 - The Collector in the absence of any scheme or project being approved by the State Government cannot exercise power for publishing of notification u/S 4

of the Act. In the notification published under Section 4 of the Act, it was also stated that the provisions of Section 5-A of the Act of 1894 shall not apply to the proposed acquisition since in the opinion of Government, the provisions of Section 17(1) of the Act of 1894 were applicable and, therefore, the proposed acquisition was treated as a case of urgency within the meaning of Section 17(1) of the Act. It is further submitted that in fact there is no urgency at all and the same was introduced in the notification mechanically, arbitrarily with malafide intentions of depriving the appellants and other land holders of their right valuable right to file objections under Section 5A of the Act.

(iv) No urgency for invoking Section 17(1) of the Act- It is also submitted that existence of any urgency could not be reasonably made out. The stand of the respondents for invoking emergency clause is to utilize the land in question for industrial development. However, in the adjoining village Sanvariya , around 1000 acres of waste land is available which is more suitable for the proposed industrial area. The parcels of land which are acquired are very fertile land having meant for the purpose of cultivation with proper means of irrigation i.e. well and canals. It is pertinent to mention that it is the declared policy of Central as well as State Government that in the public interest, land should be conserved for agricultural production and the same should not be divested to non-agricultural purposes except where such diversion also subserves an important public purpose and same should be minimum. Government of India , looking to the increasing number of such cases had written to the Government. The Government of M.P. had written to all the Commissioners and Collectors of M.P. to ensure

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that the instructions issued with regard to acquiring of land should be adhered to.

(v) Inappropriate invocation of power u/S 7 of the Act of 1894 - It is also submitted that appellants have further challenged invocation of special powers u/S 7. As per the said provision, whenever, a land is declared to be acquired for a public purpose or for some company, the appropriate Government or officer authorized by the Government shall direct the Collector to take order for acquisition of land.

(vi) Appellants deprived of their right to property – The acquisition of parcels of land belonging to appellants and others deprive them of their right to own property as well loss of livelihood

(vii) Alternative Arrangement – It is the duty of the State Government to make all out efforts to find out suitable land which can be used for the purpose mentioned herein instead of was disturbing appellants.

(viii) Provisions of Part VII of the Act of 1894 have not been complied with – The proposed acquisition has to be made for respondent no.5. which is a company registered under the Companies Act. However on perusal of the record, it is seen that no steps have been taken to comply with the provisions of Part VII of the Act which states for the mandatory provisions to be followed while acquiring land.

5. Learned counsel further submitted that on perusal of the records of High Court, it came to light that no project or scheme for establishment of the proposed industrial area was prepared and filed and got duly approved by the State Government. However, respondent no. 3 failed to apply his mind.

6. Learned Single Judge while dismissing the writ petition has erred the Collector has not taken any prior approval from the

Commissioner and urgency clause cannot be invoked without prior permission of the Commissioner as total area sought to be acquired exceeded 100 acres. He further submits that another important aspect which has been utterly ignored by the learned Single Judge is that, the land sought to be acquired including the land of appellants in the case in hand are very fertile land irrigated by wells and canals and it is declared policy of the Central Government as well as the State Government that as much land as possible should be conserved for non-agricultural purposes except where such diversion subserves all important public purpose and even then the diversion should be limited to the minimum .

7. Learned Single Judge has further not considered the question of urgency as on proper consideration and assessment of entire material, there was no urgency at all and the recital about it was introduced in the notification only malafidely, mechanically, arbitrarily and an empty formality.

8. Under such circumstances, the entire proceedings of land acquisition is illegal and void for the reasons that the same make the appellants landless, depriving them to earn their livelihood leading to infringement of their right under Article 19(1)(g) of the Constitution of India and Article 21 i.e. right to own property. Hence, the order impugned as well as the notification issued and published u/S 4 and 6 of the Act of 1894 as well as notice issued u/S 9 of the Act are liable to be quashed.

9. Learned counsel for the appellants has pressed into service the following judgments in support of his contentions:

- **Nandeshwar Prasad and Others Vs. U.P. Government and**

Others Etc. reported in **AIR 1964 SC 1217**

- **Devendra Singh & Ors. Vs. State of U.P. & Ors.** reported in **AIR 2011 SCC 2582**
- **Laxman Lal (Dead) through Lrs & Another Vs. State of Rajasthan and Others** reported in **2013(3) SCC 764.**
- **Munshi Singh and Others Vs. Union of India** reported in **AIR 1973 SC 1150**
- **Raghbir Singh Sehrawat Vs. State of Haryana** reported in **2012(1) SCC 792.**
- **Chaitram Verma and Others Vs. Land Acquisition Offcier, Raipur and others** reported in **1994 JLJ 96 HC/DB.**

10. On the other hand, learned counsel for the respondents no.1 to 4/State has opposed the writ appeal with great vehemence and made the following submissions:

(i) Introduction of New Industrial Policy in the year 1994 – The industrial policy to curb the situation of unemployment and to promote industrial development, M.P. Industrial Policy and Action Plan, 1994 was duly adopted and approved by the legislation. Accelerating the pace of development, there is urgent need of expansion and strengthening of infrastructure The Policy of 1994 laid emphasis on industrial development leading to introduction of private sector infrastructure development so that M.P. Will also step into the shoes of other industrially developed States like Maharashtra and Gujarat etc. For balanced industrial development, it is essential that large and medium industries should be set up in the development blocks which have no industry Since, Indore is a premier Industrial city, many industrialists had approached the respondent no. 3 expressing their

willingness to lay their helping hand in setting up industries in these no industry blocks of the District. The respondent no.3 had sent proposal regarding setting up of Development of industrial blocks in Rau-Pithampur because both these blocks have good connectivity with the Mhow-Depalpur blocks and it was further proposed that development may be undertaken through medium and large agency of respondent no.5/company and requested to sanction for developing 200 to 250 acres of land in the above mentioned blocks of Mhow and Depalpur.

(ii) After receiving necessary sanction, proposal for acquisition of land be directed. On the basis of proposal made by the respondent no.3, the Revenue Commissioner, Indore Division requested the Secretary Dept. of Commerce and Industries to accord sanction to the proposal of the respondent no.3 for acquisition of land in Mhow and Depalpur blocks of Indore Distt. Thereafter, survey was carried out by a committee and Bainslay and Sonvaya villages were earmarked for the proposed acquisition.

(iii) Application of provisions of Section 5A gets dispensed with - After necessary accords and approvals from Director of Industries, Secretary, Govt. of Madhya Pradesh Deptt. of Commerce and Industry as well as from the Minister of State for Industries, respondent no. 5 was entrusted with the task of developing the infrastructural facilities in Indore and Ujjain Revenue Divisions and now the present sites at Bhainsalay and Sonvaya Villages. These sites so selected are not only in the interest of villagers living there, but also in entire Tehsil Mhow, development took place which would also bring employment opportunities for the people of that area on the one hand and revenue

in the form of taxes on the other hand. It is further submitted that an industrial area has to be developed in the shortest possible time to obviate the industrialists to compete with other States. It is the objective of the State as well to attract entrepreneurs from Pan India as well as abroad to come and invest. To bring speedy industrial development, it become imperative to invoke the urgency clause as mentioned in Section 17(1) of the Act of 1894 and application of provisions of Section 5-A of the Act gets dispensed with.

(iv) Powers of Collector/Commissioner to deal with matters relating to Section(s), 4,5,6 & 17(1) of the Act of 1894 - It is further submitted that under the Rules of business, the District Collector as well as the Commissioner, Revenue Division have been delegated the power to deal with all matters relating to Sections 4,5,6 & 17(1) of the Act of 1894. Since, the Collector, Indore is responsible for overall development of the District of Indore, he was approached by the Industrialists for immediate possession of land. The Collector had already initiated proceedings for allocating 65.246 hectares of land in No Industrial Block of Mhow, the Industrialists requested to allot the land as early as possible and, therefore, the Collector was of the view that land would be allotted to those Industrialists who would bring foreign exchange and who would export their goods thereby bringing foreign currency. Therefore, by invoking the relevant provisions of the Act of 1894, the Collector has proceeded to acquire the land.

(v) Invocation of Urgency Clause u/S 17(1) of the Act of 1894 – It is argued by learned counsel for the respondent/State that land is required for setting up an industrial estate. It is further stated that the setting up of the Industrial estate would be in the interest of economy

of the State as well as nation at large. Moreso, due to lack of no industrial development, the residents living in the surrounding peripheri of Mhow as well as Depalpur are not having sufficient means to get livelihood. Even otherwise, the industrialists are ready to set up their industrial units as soon as the acquisition proceedings are over. When all these factors were taken into consideration, the urgency clause has been invoked.

(vi) Development already carried out on land in question - It is also submitted that the respondents have developed the entire land into industrial estate and land stands leased out to some industrial concerns where they have developed their industrial units. Development work in the area like roads and other amenities have already been provided. Under such circumstances, it would not be possible to get the clock back.

11. Considering the factual scenario arising in the matter, learned Single Judge had arrived at conclusion that notification issued u/S 4 and 6 of the Act of 1894 are valid and dismissed the petition.

12. Learned counsel for the respondents no.1 to 4/State has relied upon the following judgments in support of his contentions:

- IDA Vs. Manoharlal reported in AIR 2020 1496 .
- Swarnalata Vs. State of Haryana reported in 2010(4) SCC 532.
- Harisingh Vs. State of U.P. Reported in 1996 SCC (11) 501
- State of Assam Vs. Bhaskar Jyoti Sharma reported in 2015(5) SCC 321.
- Bharat Singh Vs. State of Haryana reported in 1988(4) SCC 534.
- Tika Ram Vs. State of U.P. Reported in 2009(10)SCC 689.

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- First Land Acquisitions Collector Vs. Nirodhi Prakash Ganguli reported in (2002) SCC 160.
- General Manager Vs. Dr. Madan Mohan reported in 1995 SUPP SCC (4) 268.
- Satyendra Prasad Vs. State of U.P. Reported in 1993 (4) SCC 369.
- Vyankasamppa Vs. Deputy Commissioner reported in (1997) 9 SCC AIR SC 503.

13. Heard, learned counsel for the parties and perused the record.

14. To curb the situation where land owners were divested of their right to property enshrined under Article 300A of Constitution of India, as the same has been acquired by the State/Union , recently, the Hon'ble Apex Court has laid down seven principles in the case of **Kolkata Municipal Corporation & Anr. Vs. Bimal Kumar Shah & Ors.** reported in **2024 INSC 435**, which ought to have been followed while dealing with the matters of land acquisition.

15. The said seven principles are as follows:

30.1. ***The Right to notice***: (i) A prior notice informing the bearer of the right that the State intends to deprive them of the right to property is a right in itself; a linear extension of the right to know embedded in Article 19(1)(a). The Constitution does not contemplate acquisition by ambush. The notice to acquire must be clear, cogent and meaningful. Some of the statutes reflect this right.

(ii) Section 4 of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and

Section 3A of the National Highways Act, 1956 are examples of such statutory incorporation of the right to notice before initiation of the land acquisition proceedings.

(iii) In a large number of decisions, our constitutional courts have independently recognized the right to notice before any process of acquisition is commenced.

30.2. ***The Right to be heard*****:** (i) Following the right to a meaningful and effective prior notice of acquisition, is the right of the property-bearer to communicate his objections and concerns to the authority acquiring the property. This right to be heard against the proposed acquisition must be meaningful and not a sham.

(ii) Section 5A of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 15 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3C of the National Highways Act, 1956, are some statutory embodiments of this right.

(iii) Judicial opinions recognizing the importance of this right are far too many to reproduce. Suffice to say that that the enquiry in which a land holder would raise his objection is not a mere formality.

30.3. ***The Right to a reasoned decision*****:** i) That the authorities have heard and considered the objections is evidenced only through a reasoned order. It is incumbent upon the authority to take an informed decision and communicate the same to the objector.

(ii) Section 6 of the Land Acquisition Act, 1894, Section 3(2) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 19 of the Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3D of the National Highways Act, 1956, are the statutory incorporations of this principle.

(iii) Highlighting the importance of the declaration of the decision to acquire, the Courts have held that the declaration is mandatory, failing which, the acquisition proceedings will cease to have effect.

30.4. ***The Duty to acquire only for public purpose:*** (i) That the acquisition must be for a public purpose is inherent and an important fetter on the discretion of the authorities to acquire. This requirement, which conditions the purpose of acquisition must stand to reason with the larger constitutional goals of a welfare state and distributive justice.

(ii) Sections 4 and 6 of the Land Acquisition Act, 1894, Sections 3(1) and 7(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 2(1), 11(1),15(1)(b) and 19(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3A(1) of the National Highways Act, 1956 depict the statutory incorporation of the public purpose requirement of compulsory acquisition.

(iii) The decision of compulsory acquisition of land is subject to judicial review and the Court will examine and determine whether the acquisition is related to public purpose. If the court arrives at a conclusion that that there is no public purpose involved in the acquisition, the entire process can be set-aside. This Court has time and again reiterated the importance of the underlying objective of acquisition of land by the State to be for a public purpose.

30.5. ***The Right of restitution or fair compensation:*** (i) A person's

right to hold and enjoy property is an integral part to the constitutional right under Article 300A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be an integral part of the process of acquisition.

(ii) Section 11 of the Land Acquisition Act, 1894, Sections 8 and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3G and 3H of the National Highways Act, 1956 are the statutory incorporation of the right to restitute a person whose land has been compulsorily acquired.

(iii) Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the *sine qua non* for any acquisition process.

30.6. ***The Right to an efficient and expeditious process:*** (i) The acquisition process is traumatic for more than one reason. The administrative delays in identifying the land, conducting the enquiry and evaluating the objections, leading to a final declaration, consume time and energy. Further, passing of the award, payment of compensation and taking over the possession are equally time consuming. It is necessary for the administration to be efficient in concluding the process and within a reasonable time. This obligation must necessarily form part of Article 300A.

(ii) Sections 5A(1), 6, 11A, and 34 of the Land Acquisition Act, 1894, Sections 6(1A) and 9 of the Requisitioning and Acquisition of

Immovable Property Act, 1952, Sections 4(2), 7(4), 7(5), 11(5), 14, 15(1), 16(1), 19(2), 25, 38(1), 60(4), 64 and 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Sections 3C(1), 3D(3) and 3E(1) of the National Highways Act, 1956, prescribe for statutory frameworks for the completion of individual steps in the process of acquisition of land within stipulated timelines.

(iii) On multiple occasions, upon failure to adhere to the timelines specified in law, the courts have set aside the acquisition proceedings.

30.7. ***The Right of conclusion:*** (i) Upon conclusion of process of acquisition and payment of compensation, the State takes *possession* of the property in normal circumstances. The culmination of an acquisition process is not in the payment of compensation, but also in taking over the actual physical possession of the land. If possession is not taken, acquisition is not complete. With the taking over of actual possession after the normal procedures of acquisition, the private holding is divested and the right, title and interest in the property, along-with possession is vested in the State. Without final vesting, he State's, or its beneficiary's right, title and interest in the property is inconclusive and causes lot of difficulties. The obligation to conclude and complete the process of acquisition is also part of Article 300A.

ii) Section 16 of the Land Acquisition Act, 1894, Sections 4 and 5 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 37 and 38 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3D and 3E of the National Highways Act, 1956, statutorily recognize this right of the acquirer.

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iii) This step of taking over of possession has been a matter of great judicial scrutiny and this Court has endeavoured to construe the relevant provisions in a way which ensures non-arbitrariness in this action of the acquirer. For that matter, after taking over possession, the process of land acquisition concludes with the vesting of the land with the concerned authority. The culmination of an acquisition process by vesting has been a matter of great importance. On this aspect, the Courts have given a large number of decisions as to the time, method and manner by which vesting takes place.

16. The above seven principles which discussed above are integral to the authority of law enabling compulsory acquisition of private property. State statutes ought to have adopt these principles and incorporate them in different forms in the statutes provisioning compulsory acquisition of immovable property so that no person shall be deprived of his property save by authority of law.

17. The State and its department dealing with the cases of land acquisition should bear in mind and follow these principles to curtail the situation of land acquisition without following due process of law as the ultimate sufferers in the matter of land acquisition are the land owners who are even sometimes poor rustic villagers not very well aware of the rules and being deprived of their rightful claim over the land thereby leading to flooding of Courts with such matters and even after running from pillar to post, it would take years altogether to get justice due to lack of proper knowledge.

18. On testing the cases in hand on the anvil of above principles, there are lacunas on the part of the respondent in the acquisition proceedings which are as follows:

(i) There is no order of State Government u/S 7 of the act directing the Collector to take order for acquisition of land and also there was no order of the State Government u/S 17(1) of the Act of 1894 directing taking over of possession after issuing notice for the purpose of Section 9 of the Act.

(ii) The Collector who was delegated the powers for acquisition proceedings, has exceeded his jurisdiction while issuing and publishing the impugned notifications under Section 4 and 6 of the Act of 1894 as well as invoking the clause for urgency u/S 17 of the Act of 1894. The Collector without any prior approval of Government in the shape of an order made and expressed in the name of Governor for establishment of industrial Estate had malafidely and arbitrarily issued notification u/S 4 of the Act in haste in as much as that since the total area of land sought to be acquired is exceeded 100 acres, therefore prior approval/permission of Commissioner is required and he has to apply before the Commissioner for publication of notification u/S 4 of the Act of 1894 and also for introducing the urgency clause u/S 17 of the Ac of 1894. On a bare perusal of the notification u/S 4 of the Act of 1894, it surfaced that notification u/S 4 was drafted on 20.10.1994 after securing the Commissioner's permission and approval, however, it was sent for publication prior to permission i.e. on 19.10.1994 which clearly goes to show that the Collector had acted mechanically, capriciously and arbitrarily without application of mind.

(iii) Coming to the invocation of urgency Clause u/S 17 of the Act of 1894 – Invocation of urgency Clause in the notification u/S 4 of the Act of 1894 , there should be recital to show that there was application of mind to the question whether the land owners should be deprived of

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their valuable right to file objections against the proposed acquisition. However, in both the cases, the respondent/State is not able to make out a case as the material available on record shows that the urgency is at the behest of industrialists who in order to succeed in their ulterior motives had contacted the Collector and the Collector in utter disregard with the constitutional requirement for giving equal opportunity to all to apply for plots of land for establishment of industrial units proceeded with the acquiring of land in haste without following the mandatory provisions of the Act of 1894.

19. This is a crucial question for consideration is as to whether invocation of urgency Clause under Section 17 of the Act, 1894 and dispensing with the inquiry contemplated under Section 5-A thereof is justified and sustainable in the available facts of the case.

20. The principles as regards invocation of emergency Clause under Section 17 (1) of the Act, 1894 have been culled out by the Hon'ble Apex Court in the case of **Radhy Shyam (dead) through LRs and Others** reported in **2011(5) SCC 553** in the following terms :-

> **"77.** From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:
> (*iv*) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however laudable it may be d es not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, can the State invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.
> (*v*) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the

application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

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

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

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

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

21. It has been repeatedly held by the Apex Court that right of an owner/person interested under Section 5-A is not an empty formality and the State Government has to apply its mind before invoking its power of urgency and dispensation of inquiry under Section 5-A and arrive at a conclusion that compliance with the mandate Section 5-A

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may lead to loss of precious time which may defeat the purpose for which the land is sought to be acquired. In this regard it would be profitable to refer to the decision of the Apex Court in **Laxmanlal (dead) and Others V/s. State of Rajasthan and Others (2013) 3 SCC 764** in which it has been laid down as under :-

> ***"22.*** *In light of the above legal position which is equally applicable to Sections 17(1) and (4) of the 1953 Act, we may turn to the fact situation of the present matter:*
> ***22.1.*** *The Section 4(5) notice under the 1953 Act was issued by the State Government in 1980. For almost seven years, no steps were taken in taking the acquisition proceedings pursuant to the Section 4(5) notice to the logical conclusion. Even inquiry under Section 5-A was not commenced, much less completed.*
> ***22.2.*** *Abruptly on 19-3-1987, without following the procedure contemplated in Section 5-A, the declaration under Section 6 was made and in that Notification the State Government stated that it has invoked its power of urgency under Section 17(1) and dispensed with inquiry under Section 5-A in exercise of its power under Section 17(4).*
> ***22.3.*** *Can it be said that an inquiry under Section 5-A could not have been completed in all these years? We think that it could have been done easily and conveniently in few months leave aside few years. There were not large number of owners or persons interested in respect of the subject land.*
> ***22.4.*** *Section 5-A, which gives a very limited right to an owner/person interested, is not an empty formality. The substantial right under Section 5-A is the only right given to an owner/person interested to object to the acquisition proceedings. Such right ought not to be taken away by the State Government sans real urgency. The strong arm of the Government is not meant to be used nor should it be used against a citizen in appropriating the property against his consent without giving him right to file objections as incorporated under Section 5-A on any ostensible ground. The dispensation of enquiry under Section 17(4) has to be founded on considerations germane to the purpose and not in a routine manner. Unless the circumstances warrant immediate possession, there cannot be any justification in dispensing with an enquiry under Section 5-A. As has been*

stated by this Court in Anand Singh [(2010) 11 SCC 242 : (2010) 4 SCC (Civ) 423] , elimination of enquiry under Section 5-A must only be in deserving and in the cases of real urgency. Being an exceptional power, the Government must be circumspect in exercising power of urgency.

26. *The explanation by the State Government unsupported by any material indicates that the State Government feels that power conferred on it under Sections 17(1) and (4) is unbridled and uncontrolled. The State Government seems to have some misconception that in the absence of any time-limit prescribed in Sections 17(1) and (4) for exercise of such power after issuance of notice under Section 4 of the 1953 Act, it can invoke the power of urgency whenever it wants. We are afraid the whole understanding of Section 17 by the State Government is fallacious. This Court has time and again said with regard to Section 17(1) read with Section 17(4) of the 1894 Act that the provisions contained therein confer extraordinary power upon the State to appropriate the private property without complying with the mandate of Section 5-A and, therefore, these provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. This principle equally applies to the exercise of power under Sections 17(1) and (4) of the 1953 Act. The State Government, therefore, has to apply its mind before it invokes its power of urgency and dispensation of inquiry under Section 5-A that the compliance with the mandate of Section 5-A may lead to loss of precious time which may defeat the purpose for which land is sought to be acquired. Any construction of building (institutional, industrial, residential, commercial, etc.) takes some time and, therefore, acquisition of land for such purpose can always brook delay of few months. Ordinarily, invocation of power of urgency by the State Government for such acquisition may not be legally sustainable."*

22. In view of the above and in the factual position as is available on record, we have no hesitation in holding that the invocation of urgency clause by the State Government under Section 17(1) of the Act, 1894 was without any application of mind, unreasonable, arbitrary and wholly unjustified which has resulted in deprivation of

the valuable rights of the appellants available to them under Section 5-A of the Act, 1894.

23. Learned Single Judge while dismissing the writ petitions has failed to consider that under the garb of public purpose, fulfillment of ulterior motives of certain industrialists has been taken care of in as much as that Industrial Policy, 1994 came into existence on 06.05.1994. Immediately thereafter the Collector came into action and started following necessary provisions of the Act of 1894 for acquisition of land. All the steps were taken in haste, thereby leaving certain lacunas and depriving the rights of land owners whose precious fertile and irrigated land was acquired for the purpose of setting up of industrial estate in utter violation of the Central Government as well as State Government that as much land as possible should be conserved for agricultural production and should not be diverted for non-agricultural purposes. The Collector did not apply his mind to this declared policy of the Government.

24. By invoking the urgency clause and closing the opportunity to file objections under Section 5-A , the appellants have been deprived of their ultimate right to file objections, which has not been taken into consideration by the learned Single Judge while dismissing the writ petitions filed by the appellants.

25. In view of the aforesaid discussion, since we have held that there has been gross illegality and irregularity in the matter of invocation of the urgency clause under Section 17(1) of the Act, 1894 dispensing with the enquiry contemplated under Section 5-A which has deprived the appellants of their fundamental right of hearing in the matter, the appeals deserve to be allowed. Accordingly, both the appeals are allowed. The impugned judgment dated 04.10.1996 passed

in W.P. No. 1824/1994 as well as impugned judgment dated 02.10.1996 passed in W.P. No. 1798/1994 are hereby set aside. The notification under Section 4 & 6 as well as notice u/S 9 of the Act, 1894 only in so far as the same relates to the appellants herein are quashed.

26. The appeals are accordingly allowed and disposed off.

Let a copy of this order be kept in the record of W.A. No. 762/2006.

(S.A. Dharmadhikari)
Judge

(Gajendra Singh)
Judge

sh/-