
(2016) 07 AHC CK 0187
In the Allahabad High Court
Case No : Writ C No. 17029 of 2008

Aakash Education Society Chithera

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 21-07-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(4), 4(1), 5A

Citation : (2016) 8 ADJ 677 : (2016) 4 UPLBEC 3129

Hon'ble Judges : Sudhir Agarwal and Shamsheer Bahadur Singh, JJ.

Bench : Division Bench

Advocate : Uma Nath Pandey and Pradeep Kumar, Advocates, for the Petitioner; C.S.C, Anurag Khanna, Ashish Mohan Srivastava, Pankaj Dubey, Ramendra Pratap Singh, S.K. Mishra, Satish Chaturvedi and Siddhartha Verma, Advocates, for the Respondent; Uma Nath Pandey, Prad

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—These writ petitions have been filed by Aakash Education Society, Chithera and other petitioners assailing notifications dated 19.01.2007 published under Section 4(1) of Land Acquisition Act, 1894 (hereinafter referred to as "Act, 1894"); and dated 11.07.2007 published under Section 6 of Act, 1894, proposing to acquire 87.249 hectare (215.592 acres) of land in village Chithera, Pargana Dadari, District Gautambudh Nagar comprising a large number of plots owned by petitioners. Land is proposed to be acquired at the instance of and for the benefit of U.P. State Industrial Development Corporation, Kanpur (hereinafter referred to as "UPSIDC"). State Government have also invoked power under Section 17(1) and (4) and eliminated inquiry under Section 5A of Act, 1894.

2. Counsel for parties stated that issues raised in all these writ petitions are common, therefore, for the purpose of referring pleadings, parties have agreed to refer leading Writ Petitions no. 17029 of 2008 (Aakash Education Society Chithera v. State of U.P. and others). Hence, we are proceeding to discuss the

matter after referring pleadings in Writ Petition no.17029 of 2008. However, in order to show details of land acquired in other connected writ petitions we may give brief details in the form of chart as under and thereafter, shall proceed to discuss entire matter with reference to leading Writ Petition no. 17029 of 2008.

Sl. No.

Writ petition No.

Petitioner/Claimant

Plot no.

Area (in hectare

Sale-deed/gift deed

Date of mutation

1

2

3

4

5

6

7

1

21078/08

Rohtash Kumar

1005

0.29

12.10.2006

2

23948/08

Mahendra Pal Singh

1051 M

1051 M

0.107

0.228

1990

03.11.2007

03.11.2007

3

24150/08

1.Mahendra Singh

2. Ravindra Singh

3. Smt. Ram Rati

4. Krishna Singh

5. Bharat Singh

1052M

1.08

Ancestral

26.12.2006 on the basis of succession of late Balvir

4

24152/08

1. Ram Pal Singh

2. Charan Singh

1049

0.44

Ancestral

5

27115/08

1. Rampal Singh

2.Charan Singh

1051M

1.03

05.07.86

04/09/2006

6

49767/08

All India Rehabilitation Education Society

1007/2

1.628 (5148)b

28.12.2002

09.08.2002

26.12.2002

31.12.2002

03/06/2003

7

54286/08

1. Ram Veer Singh

2. Sri Ram Sharma

3. Ram Das

1050

0.14

27.07.2007

8

54287/08

Kishnu

1051M

0.61

03/07/73

07/08/76

9

20991/09

1.Gajendra Singh

2.Virendra Singh

3. Ram Prasad

1051M

9/06/75

3. Brief facts giving rise to leading petition are that petitioner M/s Akash Education Society is a Society registered under Societies Registration Act, 1860 (hereinafter referred to as "Act, 1860"). Its title have now changed as "R.V. Higher Education and Technical Institution", Chithera, Dadari, Gautambudh Nagar. Petitioner Society owns land comprising of Plots no.1050, 1041, 1042, 1044, 1045, 1046, 1047, 1048, 1049 and 1051. It is running an educational institution having raised construction over land bearings plots no. 1046, 1047 and 1048. Land have been mutated in the name of petitioner. It have started one year course of B.Ed after approval granted by National Council for Teacher Education vide letter dated 28th August, 2004 to which State Government also issued "no objection certificate" on 10th February, 2005. Aforesaid course is affiliated to Chaudhari Charan Singh University, Meerut, affiliation to which have been granted vide Vice Chancellor's order dated 19.06.2006. Petitioner have also been granted approval by All India Council for Technical Education for running B. Pharmacy Course since academic year 20062007.

4. Government issued notification, aforesaid, proposing to acquire land for public purpose namely "Planned Industrial Development" through UPSIDC at Gautambudh Nagar, though Society's land have already been utilised for industrial development by running professional, technical and educational institutions.

5. Acquisition proceedings have been challenged on the ground that dispensation of inquiry under Section 5A is wholly arbitrary inasmuch as there is no urgency whatsoever, hence Section 5A have been illegally dispensed with. Denial of opportunity to file objections by land owners is illegal and there is no material to demonstrate that there existed such an urgency so as to justify dispensation of inquiry under Section 5A of Act, 1894.

6. UPSIDC is a company owned by State of U.P., hence provisions of Part VII of Act, 1894 are attracted but no inquiry under Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as "Rules, 1963") have been carried out before issuing impugned notifications. Villages in which proposed acquired land is situated, are part of New Okhala Industrial Development Authority (hereinafter referred to as "NOIDA"), a body constituted under U.P. Industrial Development Act, 1976 (hereinafter referred to as " Act, 1976") and no development of land etc. is permissible without permission of such authority but no approval or permission of NOIDA have been obtained.

7. Petitioner Society have filed a supplementary affidavit sworn on 11th February, 2014 stating that earlier some documents were not available, hence the same could not be appended along with writ petition. Now it have got, therefore, filing supplementary affidavit. Land in question was acquired for the benefit of a private company i.e. "M/s Shiv Nadar Foundation". Proposal for

acquisition for benefit of respondent-4 was initiated by UPSIDC vide letter dated 10.06.2006. Additional District Magistrate (Land Acquisition) [hereinafter referred to as "ADM(LA)"] vide letter dated 15.06.2006 required UPSIDC to deposit 10% tentative compensation and 10% acquisition expenses. UPSIDC sent a letter dated 19.06.2006 asking details of demand. ADM(LA) vide letter dated 26.08.2006 raised objection that proposal was not made in prescribed format. No report of Land Selection Committee was appended. Purpose of acquisition was not mentioned and there are other defects. UPSIDC vide letter dated 30.08.2006 replied that acquisition is proposed for benefit of S.S.N. Educational and Charitable Trust who have selected the land. Again a letter dated 31.08.2006 was sent by ADM(LA) raising objections. Thereafter, Collector sent proposal vide letter dated 10.11.2006 to State Government for issuance of notification under Sections 4(1) read with 17(4) of Act, 1894. State Government deputed UPSIDC to take step for publication of notification in two daily newspapers pursuant where to, UPSIDC deputed Administrative Officer and HCL company for taking steps for such publication vide letter dated 08.02.2007.

8. UPSIDC vide letter dated 16.04.2007 requested its Head Office to forward rehabilitation amount against proposal of acquisition of land to Revenue Authorities. Rehabilitation amount was remitted by UPSIDC to ADM(LA) vide letter dated 05.04.2007.

9. With respect to purchase of land in dispute, details have been give by petitioner society in paragraph 18 to 26 of supplementary affidavit which are as under:

"18. That, the land of Khasra No.1050 area 0.1265 hectare have been purchase by the petitioner vide sale deed dated 05.06.2006. for ready reference, a true copy of the sale deed dated 05.06.2006 regarding Khasra No.1050 is being annexed herewith and marked as Annexure No.SA11 to this affidavit.

19. That, the land of Khasra No.1044 area 0.550 hectare have been gifted by the original tenure holder vide registered gift deed dated 22.12.2003 and the name of petitioner have been recorded in the revenue record vide order of Niab Tehsildar dated 27.10.2005. For ready reference, a photo-state copy of the Khatauni of Khasra No.1044 is being annexed herewith and marked as Annexure No.SA12 to this Affidavit.

20. That, the land of Khasra No.1049 have been purchase by two separate sale deed dated 04.09.2006 and 03.02.2007 and the name of petitioner have been recorded in the revenue record vide order of Niab Tehsildar dated 07.03.2008 and 22.03.2010. For ready reference, a photostat copy of the Khatauni of Khasra No.1049 is being annexed herewith and marked as Annexure No.SA13 to this affidavit.

The aforesaid land of Khasra No.1050, 1044 and 1049 have been purchase prior to publication of notification under Section 4(1) read with 17(4) of the Land Acquisition Act.

21. That, the part of the land of Khasra No.1050 area 0.1265 hectare was purchase vide sale deed dated 18.07.2007 and name of petitioner have been mutated in revenue record vide order of Naib Tehsildar dated 24.08.2007. For ready reference, a photostat copy of the Khatauni of Khasra No.1050 is being annexed herewith and marked as Annexure No.SA14 to this affidavit.

22. That, the land of Khasra No.1041 area 0.2887 hectare have been purchase by the petitioner vide sale deed dated 14.09.2007 and the name of petitioner have been recorded in the revenue record vide order of Niab Tehsildar dated 01.10.2007. for ready reference, a photostat copy of the Khatauni of Khasra No.1041 is being annexed herewith and marked as Annexure No.SA15 to this affidavit .

23. That, the land of Khasra No.1042 area 0.0380 hectare has been purchase by the petitioner vide sale deed dated 14.09.2007 and the name of petitioner has been recorded in the revenue record vide order of Niab Tehsildar dated 01.10.2007. For ready reference, a photostat copy of the Khatauni of Khasra No.1042 is being annexed herewith and marked as Annexure No.SA16 to this affidavit.

24. That, the remaining part of the Khasra No.1044 has been purchase by petitioner vide sale deed dated 01.09.2007 and the name of petitioner has been recorded in the revenue record vide order of Niab Tehsildar dated 18.10.2007. For ready reference, a photostat copy of the Khatauni of Khasra No.1044 is being annexed herewith and marked as Annexure No.SA17 to this affidavit.

25. That, the land of Khasra No. 1045 has been purchase by two separate sale deed dated 14.11.2007 and 15.12.2007 and the name of petitioner has been recorded in the revenue record vide order of Niab Tehsildar dated 26.12.2007 and 19.03.2008. For ready reference, a photostat copy of the Khatauni of Khasra No.1045 are being annexed herewith and marked as Annexure No.SA18 collectively to this affidavit.

26. That, the land of Khasra No.1051 has been purchase by two separate sale deed dated 22.09.2007 and 10.09.2007 and the name of petitioner has already been recorded in the revenue record vide order of Naiab Tehsildar dated 01.11.2007 and 04.11.2007. For ready reference, a photostat copy of the Khatauni of Khasra No.1051 are being annexed herewith and marked as Annexure No.SA19 collectively to this affidavit.

10. The main building of Pharmacy and Management Institution is situated at Plots no.1046, 1047 and 1048. Building of B.Ed. and Physical Education is situated over Plot No.1049. Play ground is situated over Plots no. 1050, 1041, 1042, 1044, 1045 and 1051. It is also pleaded that in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "Act, 2013"), acquisition proceedings have lapsed.

11. Counter affidavit on behalf of UPSIDC (respondent 2) has been filed stating that Collector satisfied himself with urgency of acquisition of land and issued certificate in this regard and forwarded to Board of Revenue along with letter dated 29th September, 2006. Notices under Section 9 of Act, 1894 were issued to land owners and thereafter possession of acquired land was taken on 13.12.2007. Most land owners have received compensation under U.P. Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997 (hereinafter referred to as "Rules, 1997") on the basis of compromise. At the time of publication of acquisition notifications, name of petitioner was not found recorded in revenue record. Only on Khasra No. 1050, Dhanpal and others had two boring"s and one Rahta Tree. On Khasra No.1045, Sri Ram Prasad and others have boring"s. On Khasra No. 1051, Sri Kishnu, Khacheru, Mukut, Vijai Pal and others have boundary wall measuring 5 x 2 x 1 metre high, 30 x 200 x 9 feet high, 60 x100 x 9 feet, 60 x 14 x 9 feet high for construction of shop, boundary wall measuring 4.60 x 100 x 9 feet high was existing and there was 5 feet soil digging in 1.719 hectare as per possession certificate dated 13.12.2007. No institution existed on disputed land till date of possession. Hence question of running such institution at that time does not arise. At the time of possession, plots in dispute were vacant and still are lying vacant. Notifications were published in two daily newspapers "Vartman Satta" and "Dainik Yatharth" on 11.05.2007 and 10.05.2007 respectively. Greater New Okhla Industrial Development Authority (hereinafter referred to as "GNOIDA") has also issued certificate on 30.05.2006 stating that acquired land is outside notified area of GNOIDA.

12. UPSIDC is Government owned Corporation and not a private company. Part VII of Act, 1894 is not attracted in the present case. Writ petition has been filed with lot of delay and laches without explaining the same and for this reason also petition deserves to fail.

13. Rejoinder Affidavit, sworn by Sri Vijendra Singh Bhati on 06.09.2009, has been filed by petitioner society stating that though relevant facts have not been disclosed by respondents but it has come to know that prior to acquisition notifications in question, UPSIDC issued a letter dated 19.06.2006 to a private company namely "M/s Shiv Nadar Foundation Charitable Trust" requiring it to deposit Rs. 6,14,98,829/towards 10% of compensation amount of total proposed acquired land for establishing "S.S.N. Educational and Charitable Trust" for which UPSIDC proposed to acquire 87.193 hectare of land in village Chithera. The said amount was paid by aforesaid company namely "M/s Shiv Nadar Foundation Charitable Trust" (respondent 4) vide cheque dated 6th July, 2006 in the name of UPSIDC. UPSIDC also entered into an agreement on 8th September, 2008 with respondent-4 allocating entire land acquired by acquisition notifications in question. The agreement shows that an application was submitted by respondent-4 on 12.06.2006 requesting to acquire/allot land which was accepted by UPSIDC and pursuant thereto 293.292 acres of land (215.592 acres private land and 77.70 acres of Gram Sabha land) was allotted to respondent-4, who

had deposited a total sum of Rs. 1,04,28,52,440.00 towards provisional premium of land with overhead charges. Balance, if any, would be intimated by UPSIDC later on. Petitioner has not received compensation of land in question and if compensation has been received by some other tenure holders that would not debar petitioner from challenging validity of impugned notifications. Land was actually proposed to acquire for a private individual in the garb of public purpose by dispensing with urgency clause which shows that total illegal mode has been adopted by respondents in acquisition of disputed land.

14. Respondents 1 and 3 have filed a supplementary counter affidavit sworn by Sri Shishir, ADM(LA), Gautam Budh Nagar on 19th May, 2014. It is stated therein that UPSIDC vide letter dated 10th May, 2006 sent a proposal for acquisition of 216.1952 acres land in village Chithera for establishment of "S.S.N Educational and Charitable Trust" through UPSIDC.

15. With regard to acquired land of petitioner society, respondents 1 and 3 have give details of dates on which land has been purchase by petitioner society are as under:

Sl. No.

Khasra no.

Area (in hectare)

Date of sale deed

Date of Mutation

1

1049

0.19

04/09/06

03/02/07

07/03/08

22.03.2010

2

1050

0.1265

18.07.2007

24.08.2007

3

1041

0.2887

14.09.2007

01.10.2007

4

1042

0.0380

14.09.2007

01.10.2007

5

1044

1.3517

01.09.2007

18.10.2007

6

1045

0.1897

14.12.2007

15.12.2007

26.12.2007

19.03.2008

7

1051

0.2108

0.1265

22.07.2007

10.09.2007

01.11.2007

04.11.2007

16. It is said that most sale deeds having been executed after provisional

notification, petitioner society being a subsequent purchaser, has no right to challenge acquisition proceedings in respect to said land. Out of total 87.249 hectare of land most tenure holders have received compensation under Rules, 1997 and in respect of remaining land, ADM(LA) has made award on 23.11.2011. It is reiterated that acquisition has been made for the purpose of establishment of "S.S.N Educational and Charitable Trust" through UPSIDC. Respondent-4 (M/s Shiv Nadar Foundation) is not a private company but a charitable trust which imparts education. Education is a public purpose and in consonance with Industrial and Service Sector Investment Policy, 2004 framed by State of U.P. in 2004. Acquisition proposal was not initiated by Collector but it was done by UPSIDC through its letter dated 10.05.2006. Allegations of colourable exercise of power are denied.

17. A supplementary rejoinder affidavit sworn on 6th July, 2014 has also been filed, wherein besides others it is also said that tenure holders who are alleged to have received compensation under agreement have mostly challenged acquisition in various writ petitions.

18. On behalf of respondent-4, a counter affidavit has been filed separately, stating that petitioner has concealed the fact that compensation for land comprising Khasra No. 1051, 1106, 1209, has been accepted by petitioner. It has also give a chart in paragraph 4 stating that land comprising Khasra Nos. 1050, 1041, 1051, 1042, 1044, 1045, 1049 has been purchase after publication of provisional notification under Section 4 (1) of Act, 1894. Further acquired land has been transferred by Collector to UPSIDC on 13.07.2008. The land on which petitioner's institution is running, is excluded from acquisition. Challenge, in fact, pertains to adjacent land which was acquired by petitioner mostly, after acquisition proceedings were initiated and provisional notification under Section 4(1) was published. The allotment of land by UPSIDC to respondent-4 on 8th September, 2008 is not disputed. Respondent-4 is a registered public charitable trust established with the object of imparting high standard education to public at large. The State Legislature enacted Shiv Nadar University Uttar Pradesh Act, 2011(hereinafter referred to as "U.P. Act, 2011") (U.P. Act No.12 of 2011) notified in gazette on 6th April, 2011. Shiv Nadar University is an independent institution for providing multifaceted higher education, learning and research in State of Uttar Pradesh. University has also been allowed to commence function for academic session 2011 vide State Government's letter dated 18th April, 2011. University has been established on lease land. University Grant Commission has also notified Shiv Nadar Foundation as an accredited University and All India Council of Technical Education has granted approval to University. Entire geography and topography and use of land has irreversibly changed and third party interest has been created. Acquisition proceedings were initiated by State of U.P. for benefit of UPSIDC for "Planned Development" which includes establishment of University also. Rate of compensation payable to farmers was fixed by consensus and determined at Rs.850/per sq. meter instead of prevailing rate of Rs.250/per sq. meter. Respondent-4 has already undertaken several

developmental activities like construction of road, drainage, street lights etc. There already existed now a functional University with huge construction and infrastructure etc.

19. In rejoinder affidavit filed in reply to counter affidavit of respondent-4, petitioner has stated that present writ petition has nothing to do with land under Khasra nos. 1096, 1106 and 1209. On other aspect, it has reiterated what it has said in writ petition.

20. There is another Supplementary Counter Affidavit sworn by Sri V.K. Singh, Manager Law, UPSIDC in reply to supplementary affidavit, wherein facts stated are similar to supplementary counter affidavit filed on behalf of respondent-3 and same is the position to supplementary rejoinder affidavit, therefore we are not repeating the same.

21. Sri K.R. Sirohi, learned Senior Advocate appearing on behalf of petitioner society contended that land in question has been acquired for the benefit of a private body but neither any inquiry as contemplated under Rule 4 of Rules, 1963 has been conducted nor procedure under Part VII has been followed. He further submitted that dispensation of inquiry under Section 5A is founded on no material and in fact it is just in a mechanical manner without any justification, and therefore exercise of power under Section 17(4) to dispense with inquiry under Section 5A is patently illegal.

22. Learned Standing Counsel appearing on behalf of State and Sri Navin Sinha, learned Senior Counsel appearing for respondent-4 contended that land has been acquired for public purpose of establishing an educational institution which was to be developed through UPSIDC. Collector having satisfied with urgency of matter made its recommendation, therefore, dispensation of inquiry under Section 5A is just, valid and in accordance with law. He further submitted that petitioner basically is a subsequent purchaser in respect of major part of disputed land and hence has no right to challenge acquisition proceedings. Further in most of the matters compensation without any objection, in fact, under the agreement, has been accepted by tenure holders. There are subsequent developments on land in question hence no interference would be justified by this Court in writ jurisdiction under Article 226 of Constitution of India.

23. Authorities relied by parties are common and we shall discuss the same while discussing the relevant issues.

24. The first question is about land comprising plots which have been acquired by petitioner society after notification under Section 4(1) was published. The notification dated 19.01.2007 was also published in newspapers on 10th May, 2007 and 11th May, 2007. Following land said to have been acquired by petitioner vide sale deeds executed after notification dated 19.01.2007.

Sl. No.

Plot No.

Area (in acre)

Date of sale deed/gift deed

1

1050

0.31

18.07.2007

2

1041

0.71

14.09.2007

3

1042

0.09

14.09.2007

4

1044

1.35

01.09.2007

5

1045

0.47

14.12.2007

6

1045

0.21

15.12.2007

7

1049

0.19

03.02.2007

8

1051

0.31

22.07.2007

9

1051

0.52

10.09.2007

25. The question in relation to above mentioned land, need be considered by this Court is, "whether petitioner, who is subsequent purchaser can challenge acquisition proceedings after a declaration is made under Section 4(1) of Act, 1894".

26. This question came to be considered before Supreme Court in U.P. Jal Nigam v. Kalra Properties Pvt. Ltd. 1996 (3) SCC 124 where it observed in para 3 of judgment, as under:

"3. ... It is wellsettled law that after the notification under Section 4(1) is published in the gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property."

27. In Sneh Prabha v. State of U.P. 1996 (7) SCC 426, Court said:

"5. It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an impediment to anyone to encumber the land acquired thereunder. It authorises the designated officer to enter upon the land to do preliminaries etc. Therefore, any alienation of land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, titles and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder."

28. In Ajay Krishan Shinghal etc. v. Union of India and others 1996 (10) SCC 721, Court in para 13 of judgment referring to its earlier decisions in State of U.P. v. Smt. Pista Devi and others AIR 1986 SC 2025; Gian Chand v. Gopala and others 1995 (2) SCC 528; Mahavir and Anr. v. Rural Institute, Amravati and another 1995 (5) SCC 335 and Laxmi Engineering Works v. P.S.G. Industrial Institute 1995 (3) SCC 583, and held that it is a settled proposition that after

Notification under Section 6 is published, property under acquisition cannot be transferred and any such transaction is void. The subsequent purchaser at the best can only claim compensation of acquired land claiming interest in land which his predecessor-in-title had.

29. In *Star Wire (India) Ltd. v. State of Haryana and others* 1996 (11) SCC 698, Court reiterated the aforesaid exposition of law.

30. The aforesaid authorities were followed in *Meera Sahni v. Lieutenant Governor of Delhi and others* 2008 (9) SCC 177 and in para 21 of judgment, Court said as under:

"21. In view of the aforesaid decisions it is by now well settled law that under the Land Acquisition Act the subsequent purchaser cannot challenge the acquisition proceedings and that he would be only entitled to get the compensation."

31. The above decision in *Meera Sahni v. Lieutenant Governor of Delhi* (supra) was followed in *Bangalore Development Authority v. Vijaya Leasing Ltd.* 2013 (14) SCC 737.

32. In *Pandit Leela Ram v. Union of India* AIR 1975 SC 2112, Court said that "any one who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril".

33. In *V. Chandrasekaran and another v. Administrative Officer and others*, (2012) 12 SCC 133, Court after referring to the aforesaid authorities summarised its conclusion, as under;

"In view of the above, the law on the issue can be summarised to the effect that a person who purchases land subsequent to the issuance of a section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title."

(emphasis added)

34. When confronted with aforesaid exposition of law, learned counsel for petitioner could neither dispute the same, nor could place any authoritative precedent binding on this Court so as to pursue us to take an otherwise view in the matter. Hence, in respect of above mentioned land, it is not necessary to examine whether Notification under Section 6(1) of Act, 1894 is valid or not since petitioner lacks locus standi to challenge acquisition proceedings. In view of exposition of law discussed above and considering the fact that petitioner is subsequent purchaser of land mentioned in paragraph no.24 has no locus standi to challenge acquisition proceedings in respect thereof and to this extent, in our view, this writ petition deserves to fail.

35. Now we come to the question of dispensation of inquiry under Section 5A by invoking power under Section 17(4). This issue will be relevant only in respect to

Plots no. 1050 area 0.1265 acre, 1044 area .0550 acre and 1049 area 0.4430 acre which came to be possessed by petitioner vide sale/gift deeds dated 05.06.2006, 22.12.2003 and 04.09.2006, respectively. Submission is that there is no material on record to show existence of circumstances justifying urgency so as to dispense with inquiry under Section 5A.

36. Section 5A was inserted in Act, 1894 as long back as in 1923, by Act No. 38 of 1923. There are minor amendments made subsequently but substance of provision has remained the same.

37. Normal procedure of acquisition is that a proposal of acquisition is published in notification under Section 4 of Act, 1894. Land owners whose land is proposed to be acquired, are given an opportunity to make their objections. Collector is under an obligation to consider objections and also offer an opportunity of hearing to objectors and thereafter submit a report to Government containing his recommendations on the objections, for decision of Government. After considering the report and other material, Government makes declaration that land is proposed to be acquired for public purpose and this is done by publication of notification under Section 6. Therefore, there is possibility of some difference in details of land stated in the notification issued under Section 4 and finally declared land, as acquired for public purpose, detailed in notification under Section 6.

38. Collector is then authorised to take order for acquisition and under Section 8 is supposed to mark, measure and plan the acquired land. A notice thereafter is issued under Section 9 to Land Owners by Collector notifying his intention of taking possession of land and that the claim for compensation be submitted to him. Under Section 11, Collector makes enquiry for determining amount of compensation payable to land owners, whose land has been acquired, and makes award. After payment of compensation, Collector takes possession of land.

39. There is an exception to normal procedure of taking possession which is contained in Section 17 of Act 1894. It says that in case of urgency, even though no award has been made, Government can direct Collector to take possession of any land, needed for public purpose, and on such possession being taken by Collector, land shall vest absolutely with the Government free from all encumbrances. Section 17(4) provides, where such urgency for the purpose of possession is to be acted upon, Government, shall declare that provision of Section 5A shall not apply.

40. Dispensation of inquiry under Section 5A has not been held valid as a matter of routine but it has been held time and again that power should be exercised whenever it is necessary and urgency actually exist.

41. The circumstances, when Government would be justified to dispense with enquiry under Section 5A while invoking urgency clause under Section 17, for the purpose of taking possession, have been considered in a catena of decisions in last several decades and it would be useful to refer some relevant authorities in

this regard.

42. Right to file objection against proposal of acquisition of land published under Section 4 is a substantial right, consistent with principles of natural justice, since forcible acquisition of land, without consent of land owners, is a serious matter.

43. In *Nandeshwar Prasad v. U.P. Government* AIR 1964 SC 1217, Court said "the right to file objection under Section 5A 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".

44. In *Munshi Singh and others v. Union of India* (1973) 2 SCC 337, which is a decision of three judges bench, Court stressed upon and emphasised upon an inbuilt legislative recognition of principles of natural justice in Section 5A and said "Subsection (2) of Section 5A 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 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 5A".

45. In *State of Punjab v. Gurnail Singh and others* 1980 (1) SCC 471, it was held that it is fundamental that compulsory taking of a man's property is a serious matter and smaller the man, more serious the matter. Hearing him before depriving him is both reasonable and preemptive 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, 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.

46. In *Shyam Nandan Prasad and others v. State of Bihar and others* (1993) 4 SCC 255 reiterating that section 5A is mandatory, Court said "the proceeding before the Collector is a blend of public and individual enquiry".

47. In *Union of India and others v. Mukesh Hans* (2004) 8 SCC 14, Court held that Section 17(4) is an exception to normal mode of acquisition. Mere existence of urgency or unforeseen emergency by itself is not sufficient to direct for dispensation of Section 5A. Court reiterated that there must be real existing emergency for which an opinion must be formed by the Government, objectively. Court said "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 5A enquiry, which indicates that the legislature intended that the appropriate Government to apply its mind before dispensing with Section 5A 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 5A enquiry. If that was not the intention of the legislature then the latter part of subsection (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 5A 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 5A 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 5A inquiry does not mean that in every case when there is an urgency contemplated under Section 17(1) and unforeseen emergency contemplated under Section 17(2) exists that by itself would not contain the need for dispensing with Section 5A enquiry. ?.... There is need for application of mind by appropriate Government that such an urgency for dispensing of Section 5A enquiry is inherent ?..... ."

48. In *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai & Ors* (2005) 7 SCC 627, it was held that the provisions of Section 5A of Act, 1894 must be read consistent with Article 300A of the Constitution and it is akin to fundamental right of procedure before depriving a person of his land, and must be strictly complied with.

49. In *Essco Fabs Pvt. Ltd. & Anr v. State Of Haryana & Anr* (2009) 2 SCC 377, it was held that enquiry should not be dispensed with lightly.

50. In *Anand Singh and another v. State of U.P. and others* (2010) 11 SCC 242, Court considered as to when State would be justified in invoking power under Section 17(4) for acquisition of land and dispensing with enquiry under Section 5A so as to take possession immediately. It is said that power under Section 17 is not to be exercised in a routine manner. It would be justified only when circumstances warrant immediate possession. It should not be lightly invoked. It is an exceptional power enabling land acquiring body to dispense with enquiry under Section 5A. Government must apply its mind before dispensing with enquiry under Section 5A whether urgency is of such a nature that justifies elimination of summary enquiry under Section 5A. The mere mention of words in acquisition notification that Government is satisfied about urgency and dispensing with enquiry under Section 5A may raise a presumption in favour of Government that prerequisite conditions for exercise of such power are satisfied but when challenged, Government has to produce relevant material before Court to show existence of such circumstances, which justify dispensation of inquiry and avail an exceptional power under Section 17. Court further said "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 5A has been formed by the Government after due application of mind on the material placed before it".

51. With regard to judicial review of exercise of power, Court in Anand Singh and another (Supra) further said in paras 45, 46, 47 and 48 as under:

"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."

"46. As to in what circumstances the power of emergency can be invoked are specified in Section 17 (2) but circumstances necessitating invocation of urgency under Section 17(1) are not stated in the provision itself. 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 5A may not be held and objections of land owners/persons interested may not be considered. In many cases on general assumption, likely delay in completion of enquiry under Section 5A 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."

"47. The special provision has been made in Section 17 to eliminate enquiry under Section 5A 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 5A. We have already noticed few decisions of this Court. There is conflict of view in the two decisions of this Court viz.; Narayan Govind Gavate and Pista Devi. In Om Prakash this Court held that 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."

"48. As regards the issue whether prenotification and postnotification delay would render the invocation of urgency power void, again the case law is not consistent. The view of this Court has differed on this aspect due to different factsituation prevailing in those cases. In our opinion such delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has been placed by the appropriate Government before the court justifying that urgency was of such nature that necessitated elimination of enquiry under Section 5A."

(emphasis added)

52. In Radhey Shyam (Dead) through Lrs. and others v. State of U.P. and others 2011(5) SCC 553, it was reiterated that property of a citizen cannot be acquired by State without complying with the mandate of Sections 4, 5A and 6 of Act, 1894. A public purpose however, laudable would not entitle Government to invoke urgency provisions, since the same have the effect of depriving owner of

his right to property and that too without being heard. Only in a case of real urgency, Government would be justified in invoking urgency provisions. Section 17 must have been invoked only when purpose of acquisition cannot brook the delay of even few weeks or months. The authority must be fully satisfied that time of few weeks or months likely to be taken in conducting enquiry under Section 5A shall, in all probability, frustrate the public purpose for which land is proposed to be acquired. Satisfaction of Government on issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and can be challenged on the ground that authority did not apply its mind to relevant factors, and on record, there is no material justifying existence of alleged urgency. It also held that exercise of power under Section 17(1) necessarily does not result in exclusion of Section 5A, inasmuch as, the person concerned 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 shows that it merely enables Government to direct that Section 5A would not apply to the cases covered under Sections (1) or (2) of Section 17. Therefore, mere fact that certain purposes may be treated as public purpose for purpose of acquisition but that by itself would not mean that there exists urgency to dispense with inquiry unless the circumstances actually and really are in existence to show that delay in taking possession would be adverse to public interest. It also held that Court can take judicial notice of the fact that in planning, execution and implementation of scheme relating to development of residential, commercial and industrial or institutional areas, Government takes few years, therefore, in such cases private property should not be acquired by invoking urgency clause as denial of Rule of audi alteram partem embodied in Section 5A is not at all warranted in such cases.

53. In *Darshan Lal Nagpal (Dead) By Lrs. v. Govt. of NCT of Delhi and others* (2012) 2 SCC 327 after having retrospection of some of authorities on the subject, Court in para 28 of the judgment, stated as under :

"What needs to be emphasised 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 Constitutional right of not being deprived of his property without the sanction of law ? Article 300A 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 added)

54. In *Laxman Lal (Dead) through Lrs. and another v. State of Rajasthan and*

others, 2013 (3) SCC 764, Court said that "the special provision has been made in Section 17 to eliminate enquiry under Section 5A in deserving 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 5A".

55. In *Union of India and others v. Shiv Raj and others* 2014 (6) SCC 564, Court in para 15 said that Section 5A confers a valuable right on the owner of land and it is not an empty formality. It is a substantive right, which can be taken away only for good and valid reasons and within the limitations prescribed under Section 17(4) of Act, 1894.

56. In the present case, the facts, as borne out from records, are that UPSIDC sent a letter dated 10.06.2006 to Collector requesting for acquisition of land for benefit of establishment of University by respondent-4. A formal application was submitted to UPSIDC on 12.06.2006. ADM(LA) sent a letter dated 15.06.2006, requiring UPSIDC to deposit 10% tentative compensation. On 19.06.2006 UPSIDC required respondent-4 to deposit 10% of tentative/estimate amount of compensation i.e. Rs.6,14,98,829/-. Said amount was deposited by respondent-4 on 6th July, 2006. ADM(LA) sent another letter dated 26.08.2006, stating that proposal was not made in prescribed format. UPSIDC sent a letter dated 30.08.2006 stating that land is proposed to be acquired for the benefit of respondent-4, who itself has selected land. ADM(LA) sent a letter dated 31.08.2006 again raising certain objections. Collector sent letter dated 10.11.2006 to State Government, proposing issue of notification under Section 4(1) read with Section 17(4) of Act, 1894. State Government issued notification dated 19.01.2007 but it was published in newspapers on 10/11 May, 2007. Declaration under Section 6 was issued on 11.07.2007. Hence the entire exercise took almost more than one year and even publication in newspapers took almost four months time, still respondents have treated question of possession of land of such urgency so as to dispense with inquiry under Section 5A. Looking to the entire facts and circumstances in the light of discussion made above, we are of the view that in the present case respondents have erred in law in invoking provisions of Section 17(4) to dispense with inquiry under Section 5A erroneously and illegally. We are satisfied that there existed no such urgency so as to justify exercise of power under Section 17(4) for dispensation of inquiry under Section 5A of Act, 1894 and impugned notifications, therefore, in so far as inquiry under Section 5A has been dispensed with, are vitiated in law.

57. Respondents have taken an objection that petitioners have filed writ petitions with delay of more than one year which dis-entitles them any relief and writ petitions are liable to be dismissed on this reason alone.

58. It is true that delay in challenging acquisition proceedings is relevant aspect but in the present case, notification under Section 4 was published in newspapers in May, 2007. Notification under Section 6 was published in July, 2007 and leading writ petition has been filed in March, 2008. This delay per se is not so undue and unreasonable so as to nonsuit petitioners only on the ground of laches

and delay in filing writ petitions.

59. Next submission is "whether here is case where acquisition is sought to be made for a private body in the garb of public purpose, sought to be acquired by UPSIDC and whether compliance of Part VII was necessary in this case".

60. Respondents have contended that respondent-4 is a charitable trust, and therefore, is not a company as defined under Section 3(e) of "Act, 1894", hence provisions of Part VII of Act, 1894 read with Rules, 1963 have no application in respect of acquisition of land in dispute. Record shows that respondent-4 initially was a society registered under Act, 1860 and subsequently on 8th August, 2008, it was registered as a "Trust" under name and title "Shiv Nadar Foundation" with Sub-Registrar Office, Delhi under Indian Trust Act, 1882 (hereinafter referred to as "Act, 1882"). This fact is also mentioned in Section 2(o) of "U.P. Act, 2011". At the time of acquisition, therefore, it was not a "Trust" and nothing has been brought on record to show otherwise. Respondent-4 thus satisfies definition of "company" under Section 2(e) of Act, 1894 when acquisition proceedings were initiated and acquisition notifications in question were issued, therefore, it was incumbent upon respondents to observe the procedure under Part VII of Act, 1894 read with Rules 1963. It is true that acquisition proceedings for the benefit of respondent-4 were initiated at the instance of UPSIDC under the pretext of "public purpose" but the facts discussed above leave no manner of doubt that it was a colourable exercise of power and, in fact, acquisition was for a private company. Hence, it was incumbent upon respondents 1, 2 and 3 to follow the procedure prescribed under Rules, 1963 read with Part VII of Act, 1894.

61. This aspect has been dealt with by a Division Bench of this Court, in which one of us (Sudhir Agarwal, J.) was a member, in *Pooran and others v. State of U.P. and others*, 2009(10) ADJ 679 (DB), Court in para 54, 5759 of the judgement, held as under:

"54. It is admitted case of the respondents that no inquiry under the Land Acquisition (Companies) Rules, 1963 has been taken in the impugned acquisition proceedings nor part VII of the Act has been complied. Rule 4 of the Land Acquisition (Companies) Rules, 1963, provides a mandatory inquiry with regard to several subjects including as to whether any alternative suitable site can be found, if the acquisition is for the good agricultural land. Rule 4 (1) of the Land Acquisition (Companies) Rules, 1963 is quoted as below:

"Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings.

4. (1) Whenever a company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely :-

(i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition;

- (ii) that the company has made all reasonable efforts to get such lands by negotiation with the person interested therein on payment of reasonable price and such efforts have failed;
- (iii) that the land proposed to be acquired is suitable for the purpose;
- (iv) that the area of land proposed to be acquired is not excessive;
- (v) that the company is in a position to utilise the land expeditiously; and
- (vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land."

57. From the pleadings of the parties and examination of the original records, following facts emerged with regard to impugned acquisition proceedings;

(1) an application dated 19.1.2004 was submitted by Reliance Delhi Power Private Ltd. to the Collector Ghaziabad as well as to the Chief Secretary of the State of U.P. The Collector proceeded to inquire the proposal submitted by the respondent no. 2. The proposal was submitted by the respondent No. 2 with deposit of 10% of the acquisition costs and 10% of the estimated compensation (amount of Rs. 16 Crores). Acquisition proceedings were not initiated pursuant to any decision of the State Government or its any of the Departments.

(2) the land measuring 2500 acres was identified and selected by Reliance Delhi Power Pvt. Ltd. and in the application submitted to the Collector, Ghaziabad, the name of seven villages were mentioned by company. The site was neither selected by the State Government or its any of the Departments or by Collector, Ghaziabad for acquisition.

(3) the Collector Ghaziabad after conducting the necessary inquiry sent the proposal for acquisition to the Director Land Acquisition Directorate Board of Revenue U.P. Lucknow. In the letter dated 24.1.2004 it was stated that the proposal for land acquisition has been received from Reliance Delhi Power Pvt. Ltd. for acquisition of land with regard to 735.45 acres of land of village Kakarma Pargana Dasna, Tahsil Hapur. It was further stated that Reliance Delhi Power Pvt Ltd deposited the required 10% acquisition cost and 10% of estimated compensation in the specified head. The separate letters dated 24.1.2004 were forwarded by the Collector Ghaziabad with regard to seven villages along with plot numbers and area sought to be acquired. A proposed notification under section 4(1) also invoking the urgency provisions of Subsection (1) of Section 17 and Subsection (4) of section 17 was submitted. After receipt of the letter by the Collector, Ghaziabad, Director Land Acquisition examined the proposal and forwarded it by letter dated 28.1.2004 to the Principal Secretary, Energy, State of U.P. Lucknow. Separate letters dated 28.1.2004 were issued for different villages in question. In the letter dated 28.1.2004 it was specifically mentioned that Reliance Delhi Power Private Limited is a private Company hence taking into consideration Land Acquisition (Companies) Rules, 1963 and Part VII and Part III Sections 38 to 55 of the Land Acquisition Act and after getting the agreement

executed, notification under section 4(1)/17 be issued. Collector thus completed the entire proceedings and forwarded the proposal of the company for land acquisition for a company after following parts VII and VIII.

(4) the proposal received from the Director Land Acquisition vide letter dated 28.1.2004 was examined by the Department of Energy Government of U.P. and it was decided to obtain recommendation of Bhumi Upyog Parishad. Bhumi Upyog Parishad submitted a note through Principal Secretary, Niyojan on 31.1.2004 that the Reliance Delhi Power Pvt. Ltd. being a private company, keeping into consideration part VII of the Land Acquisition Act as amended according to the provisions of Sections 38 to 44B proceedings be undertaken after taking approval from the Department of Revenue and Law. The recommendations were duly approved by the Chief Minister on 31.1.2004. The Secretary, Revenue submitted a note that before issuance of section 4(1)/17 notification agreement be executed as required by paragraph 14 of the Land Acquisition Manual and the entire cost of acquisition shall be necessary to be got deposited. Subsequently although it was earlier recommended that notification under section 4(1)/17 be issued after execution of the agreement as required under section 41 but it was decided to issue notification under section 4(1) by invoking Section 17 and agreement be executed thereafter. After publication of the notification under section 4(1)/17 the draft of the agreement as contemplated under section 41 of the Act was approved by Hon"ble the Chief Minister on 19.2.2004 and thereafter it was executed. Under section 41, the entire cost of the acquisition was to be born by the company and the State was not to bear any cost of acquisition.

(5) the land acquisition proceedings were not initiated under any project/scheme submitted by Energy Department or any other Department of the State nor the acquisition in question was to result into any project of the State rather the agreement stipulated transfer of the land in favour of the respondent No. 2.

(6) the decision to bear 60% costs of the acquisition was taken after amendments in power policy was approved on 8.6.2004 and accordingly, the State support agreement was executed on 16.6.2004.

58. From the aforesaid, it is fully established that the proceedings for acquisition were taken on an application of respondent no. 2 on 19.1.2004 as acquisition for a company. When the notification was issued under section 4, the acquisition of the land was for the company and the acquisition being not acquisition initiated by the State under any of its own projects or scheme, could not be treated as acquisition for public purpose.

59. The above discussion answers the issue No. 2 that the acquisition was for a company."

(emphasis added)

62. For the reasons stated in *Pooran and others v. State of U.P. and others* (supra), we find that here also acquisition was for a private company but

mandatory procedure under Part VII read with Rules, 1963 has not been followed, therefore, acquisition notifications are patently illegal.

63. The discussion made above leads to the conclusion that petitioner society in Writ Petition no. 17029 of 2008 has to fail in its challenge to acquisition notifications in respect of land purchase by it after notification under Section 4(1) was issued. Rest of the petitions deserves to succeed.

64. In the result, Writ Petition no.17029 of 2008 is partly allowed. Impugned acquisition notifications in respect to Plots no. 1050 area 0.1265 acre, 1044 area .0550 acre and 1049 area 0.4430 acre, relating to petitioner society, are hereby quashed.

65. Remaining connected 9 writ petitions are allowed and impugned acquisition notifications in respect of disputed acquired land of these petitioners are hereby quashed.

66. Petitioners shall also be entitled to cost which we quantify to Rs.5,000/ against respondents 1 to 3, in each set of petitions.