

(2010) 12 AHC CK 0109
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61994 of 2008

Abdul Aziz and Others

APPELLANT

Vs

State of U.P. & Ors.

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(4), 4, 5A, 6

Citation : (2010) 12 AHC CK 0109

Hon'ble Judges : Ashok Bhushan, J and Shyam Shankar Tiwari, J

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.

Heard Shri Anurag Pathak learned counsel for the petitioners, Shri Alok Kumar Singh, learned Standing Counsel and Shri Rajesh Tripathi, appearing for the respondent no.4.

Learned Standing Counsel has produced the original records of the State Government in pursuance of earlier orders passed in this case.

By this writ petition, petitioners have prayed for quashing the notifications dated 29/6/2007, issued under Section 4 read with Section 17 (1) and 17(4) and the notification dated 22/7/2008, issued under Section 6 of the Land Acquisition Act, 1894 (hereinafter called the "Act, 1894"). The affidavits have been exchanged between the parties.

The brief facts of the case as emerge from the records are:

A request was submitted by the officers of the respondent no.4 to the Collector, Agra for acquisition of 1.389 hectare of agricultural land in Village Poiya for construction of 132 KV Sub Station, Dayalbagh. Zila Bhoomi Upyog Samiti held its meeting on 04/10/2006, and approved the proposal of acquisition looking into the importance of establishment of 132 K.V. Sub Station, Dayalbagh. On 14/11/2006, amount of 10 % of the proposed compensation was deposited by

the respondent no.4. The proposal was forwarded to the State Government by the Collector for acquisition of Plot Nos.1329 area 0.698 hectare and 1339, area 0.691 hectare along with all necessary reports and certificates. A letter dated 28/6/2007, was faxed by the Superintending Engineer, Electricity Distribution Division, Agra to the Secretary Energy that in Taj Trepazium area, rostering of electricity is being done, hence immediate steps be taken for construction of 132 K.V. Sub Station, Dayalbagh by issuing notification under Section 4(1)/17. A notification under Section 4 of the Act, 1894, was issued on 29/6/2007, which was published in the extraordinary U.P. Gazettee on 29/6/2007, for acquisition of above mentioned 2 plots in Village Poiya being Plot Nos.1329, area 0.698 and 1339 area 0.691 total area 1.389 hectare for public purpose namely: "For construction of 132 K.V. Substation Dayal Bagh, Pilipokhar MaujaPoiya, District, Agra". The substance of the notification was published in the news paper ""Amar Ujala" and ""Dainik Jagaran" on 12/8/2007, and publication by munadi was made on 29/9/2007. 70% of the total compensation namely:1,00,85,599/ was deposited on 29/1/2008, towards compensation. Declaration under Section 6 of the Act, 1894, was published on 22/7/2008, and amount of Rs. 28,81,600/ was again deposited by the respondent no.4 towards compensation on 09/9/2008. Notice under Section 9 of the Act, 1894, was issued on 10/10/2008, to the tenure holders which was served on the petitioners on 24/10/2008, which was also replied by the petitioners vide letter dated 31/10/2008. The notification under Section 6 of the Act, was also announced in the prominent places of the village on 01/10/2008. This writ petition was filed by the petitioners on 20/11/2008, challenging the aforesaid notifications, however, no interim order was passed in the writ petition. The petitioner no.1 is a cosharer of plot no.1339 of Khata no.471, to the extent of 1/3 share and petitioner nos. 2 to 5 are cosharer of plot no.1329 of Khata no.00789.

The Division Bench of this Court, while hearing the writ petition on 02/7/2010, directed the learned Standing Counsel to produce the original records.

Learned counsel for the petitioners, challenging the notifications issued under Sections 4 and 6 submitted that there was no such urgency in the matter which required dispensation of inquiry under Section 5A of the Act. It is submitted that the notification issued under Section 4 was published on 29/6/2007, substance of which was published in the newspaper on 12/8/2007, and thereafter about one year period was taken in issuing declaration under Section 6 on 22/7/2008, which clearly proves that it was not a case of such urgency that inquiry under Section 5A of the Act, was to be dispensed with. It is submitted that after issuance of notification under Section 6, the possession was taken by the Corporation in July, 2009, and thereafter construction could be started in another period of one year. It is submitted that the post notification delay clearly indicates that it was not a case of such urgency which required dispensation of inquiry under Section 5A. Reliance has been placed by the learned counsel for the petitioners on the judgment of the Apex Court reported in Om Prakash & Anr. Vs. State of U.P. & Ors, AIR 1998, SC 2504, Essco Fabs Pvt Ltd & Anr. Vs. State

of Haryana & Anr, 2009 (2) SCC 377 and Mahender Pal & Ors. Vs. State of Haryana & Ors, 2009 (107) RD, 784.

It is submitted by the learned counsel for the petitioners that had the petitioners been given opportunity it would have been established that the aforesaid land is not suitable and there are other better lands on which substation could have been established.

Shri Alok Kumar Singh, learned Standing Counsel refuting the submission of the learned counsel for the petitioners, contends that in the present case there was sufficient materials before the State Government for invoking the provisions of Section 17(1) and 17 (4) while issuing notification under Section 4 of the Act, 1894. It is submitted that the land was to be acquired for public purpose i.e. for construction of 132 KV Substation, Dayabagh. In Agra Taj Trapezium area roosting of electricity has been prohibited and there is a direction for continuous supply of electricity to enable the department to continuously supply electricity construction of 132 KV substation, Dayalbagh, was necessary and for that it was communicated to the Collector on 18/8/2006. After forwarding the proposal, several letters were sent by the Department to the State Government for taking steps for acquisition. In this context, letter dated 28/6/2007, issued by the Superintending Engineer sent by fax has been referred to which is part of the original record. It is submitted by the learned Standing Counsel that although there is a post notification delay, but postnotification delay itself cannot vitiate the acquisition proceedings when sufficient materials were available at the time when the State Government invoked Section 17 (1) and 17 (4) of the Act. It is submitted that there was some delay in construction of 132 KV substation, Dayalbagh, which construction was not proceeding with speed due to standing crops. It is submitted that the petitioners are only cosharers of the aforesaid two plots and all other cosharers of the plots have not challenged the notifications. It is submitted that the award has already been given and the cosharers have also received the compensation, whereas the petitioners did not receive the compensation. It is submitted that the postnotification delay does not vitiate the land acquisition proceedings. Reliance has been placed by the learned Standing Counsel on the judgment of the Apex Court reported in Chameli Singh & Ors. Vs. State of U.P. & Anr, AIR 1996 SC 1051, First Land Acquisition Collector & Ors, Vs. Nirodhi Prakash Ganguly & Anr, AIR 2002 SC 1314, and State of U.P. Vs. Smt. Pista Devi, & Ors, AIR 1986 SC 2025.

We have considered the submissions of the learned counsel for the parties and have perused the records including the original records of land acquisition of the State Government as produced by the learned Standing Counsel.

The principle submission which has been much pressed by the learned counsel for the petitioners is that present was not a case where inquiry under Section 5A, deserves to be dispensed with. Submission is that for one year Section 6 notification was not issued clearly indicates that it was not a case of extreme urgency. It is further submitted that even after declaration under Section 6, the

possession was taken after long delay and construction started only in July, 2010. The two plots being 1339 and 1329 on which the petitioners are cosharers were sought to be acquired for construction of 132 KV substation, Dayalbagh. There cannot be any dispute that the construction of 132 KV substation, Dayalbagh is for public purpose. The letters which have been written by the respondent no.4 to the Collector clearly mentions that in Taj Trepezium area there has to be continuous electricity supply for which construction of 132 KV substation, Dayalbagh was necessary for which the process of land acquisition was initiated. For invoking the provisions of Section 17 (4) of the Act, there has to be appropriate material before the Government on which it may arrive at a subjective satisfaction.

In the present case, challenge has been made to invocation of Section 17(4) on the ground that there was no sufficient material to invoke Section 17(4).

Learned counsel for the petitioners have placed reliance on the judgment of the Apex Court in *Om Prakash's case* (supra). *Om Prakash's case* (supra) was a case where the land was acquired for the planned industrial development of District Ghaziabad through Noida. In the aforesaid case, on the facts of the said case, the Apex Court took the view that there was no urgency since in the same village for the very purpose lands were acquired in the year 1987, and the State Authorities did not think it fit to apply urgency clause and to dispense with the inquiry under Section 5A. Following was laid down in paragraph 14.

"14.The impugned notification of 5.1.91 recites that for public interest, i.e., for the planned industrial development through NOIDA, the lands mentioned in the schedule to the notification were required to be acquired. It was further recited in the notification that because the lands were essentially required for the planned development in District Ghaziabad through NOIDA, in exercise of powers under subsection (4) of Section 17, provisions of Section 5A of the Act were dispensed with. The learned senior counsel for the appellants vehemently submitted that in the background of the aforesaid fact situation, it appeared that when the State authorities invoked subsection (4) of section 17 on 5.1.91 in connection with present acquisition, in fact, there was no urgency as even earlier in 1987, when from this very village for the very purpose lands were acquired, the State authorities in their wisdom did not think it fit to apply urgency clause and to dispense the inquiry under Section 5A and in fact heard the objectors. Even that apart, despite proposal to acquire this land was moved by NOIDA, as early as on 14th June, 1988, and even thereafter when the request was sent in this connection on 14th December, 1989, the State authorities did not think the situation to be so urgent as to respond quickly and could wait for more than one year. When the appellants in the writ petitions before the High Court raised their grievances regarding dispensing with inquiry under Section 5A being not backed up by relevant evidence and the subjective satisfaction of the State in this connection was brought in challenge, all that was stated by NOIDA in its counter in para 26 was to the effect that the contents of paras 25 and 26 of the writ

petition were denied and that the petitioners were not able to point out any lacunae in the proceedings under the Land Acquisition Act. Position was no better so far as the counter of the State authorities was concerned. In paragraph 24 of the counter before the High Court all that was stated was that paragraphs 25 and 26 of the writ petition were denied. When we turn to paragraphs 25 and 26 of the writ petition, we find averments to the effect that the urgency of the acquisition was only for the purpose of depriving the petitioners of their rights to file objections under Section 5A and their right to hold the possession till they got compensation for which the respondents had issued notification under Section 17(1) as well as notification under Section 17(4) of the Act. But so far as the process of the acquisition was concerned, the respondents were taking their own time, which would be evident from the fact that the notification under Section 4 read with Section 17(4) was issued on 5th January, 1991 but was published in the newspaper on 30th March 1991, whereas the declaration under Section 6 of the Act was made on 7th January 1992 and that on the one hand respondents had deprived the petitioners of filing their objections under Section 5A of the Act on the ground of urgency of acquisition, but on the other hand, they themselves had taken more than nine months in issuing the declaration under section 6 of the said Act. This conduct of the respondents falsified their claim of urgency of acquisition."

Further the Apex Court held that from the factual position emerging on the record of the case, it becomes clear that there was no relevant material before the State Authorities to invoke the power under subsection (4) of Section 17. Following was laid down in paragraph 16.

"16. In the light of the aforesaid factual position emerging on the record of the case it becomes clear that there was no relevant material before the State authorities when it invoked powers under subsection 5A inquiry while issuing the impugned notifications under Section 4 followed by Section 6 notification of 1992."

In the same judgment, the apex Court noticed that there may be cases where acquisition for planned development, urgency clause could be invoked. Following was laid down in paragraphs 23 and 25.

"23. It is now time for us to refer to certain latter decisions of this Court to which strong reliance was placed by Shri Mohta, learned senior counsel for NOIDA. In the case of A.P. Sareen and Others Vs. State of U.P. and Others [(1997) 9 SCC 359], a two Judge Bench of this Court consisting of Ramaswamy J. and G. T. Nanavati J, had to consider the question whether the need for urgent possession underlying acquisition proceedings could cease to exist only because of bureaucratic inadvertence. It was held on the facts of that case that urgency continued so long as the scheme was not initiated, action taken and process completed. It is, of course, true that while deciding this question, it is observed that it is well settled legal position that urgency can be said to exist when land proposed to be acquired is needed for planned development of the city or town,

etc. The said observation clearly shows that in appropriate cases when acquisition is needed for planned development of city or town urgency provisions can be invoked. This aspect is legislatively recognised by enactment of Section 17(1A) by U.P. legislature. But the said observations cannot be read to mean that in every case of planned development of city or town necessarily and almost automatically urgency clause has to be invoked and inquiry under Section 5A is to be dispensed with. It will all depend upon the facts and circumstances of each case. The aforesaid observations cannot be held to be laying down any absolute proposition that whenever any acquisition is to take place for planned development of city or town, section 5A should be treated to be almost otiose or inoperative. Such is not the ratio of the aforesaid decision and nothing to that effect can even impliedly be read in the aforesaid observation which is of general nature. It only suggests that in appropriate cases, urgency clause can be invoked when the land is proposed to be acquired for planned development of city or town.

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

It is further relevant to note that although the apex Court took the view that urgency clause was wrongly invoked in the said case, but while granting final relief acquisition was not set aside, but only liberty was given to the petitioners to make written representations under Section 48 of the Act, for exemption of their land in question, in view of the fact that petitioners were continuing in possession due to the interim order passed in the writ petition.

The judgment of the apex Court in *Essco Fabs Pvt Ltd.* (supra), was a case where the land utilisation was for public purpose namely; residential, commercial and industrial by Haryana Urban Development Authority. The apex Court had occasion to consider Section 17 (4) of the Act. Following was laid down in paragraphs 42, 48 and 53.

"42. Subsection (4) of Section 17 is an enabling provision and it declares that if in the opinion of the appropriate Government, the provisions of subsection (1) or (2) are applicable, it may direct that the provisions of Section 5A would not apply. It is, therefore, clear that the Legislature has contemplated that there may be 'urgencies' or 3 'unforeseen emergencies' and in such cases, private properties may be acquired. But, it was also of the view that normally even in such cases, i.e. cases of urgencies or unforeseen emergencies, the owner of property should not be deprived of his right to property and possession thereof without following proper procedure of law as contemplated by Section 5A of the

Act unless the urgency or emergency is of such a nature that the Government is convinced that holding of enquiry or hearing of objections may be detrimental to public interest.

48. The learned counsel for the respondent authorities, however, strongly relied upon a two Judge Bench decision of this Court in *Jai Narain & Ors. v. Union of India & Ors.*, (1996) 1 SCC 9. In *Jai Narain*, the Court held that the question of 'urgency' or 'unforeseen emergency' is the matter which is entirely based on 'subjective satisfaction of the Government' and the Courts do not interfere unless the reasons given are wholly irrelevant and there is nonapplication of mind. If the public purpose, on the face of it shows that the land is needed urgently, that by itself is relevant circumstance for justifying the action under Section 17(4) of the Act.

53. Section 17, no doubt, deals with special situations and exceptional circumstances covering cases of 'urgency' and 'unforeseen emergency'. In case of 'urgency' falling under subsection (1) of Section 17 or of 'unforeseen emergency' covered by subsection (2) of Section 17, special powers may be exercised by appropriate Government but as held by a three Judge Bench decisions before more than four decades in *Nandeshwar Prasad* and reiterated by a three Judge Bench decision in *Mukesh Hans*, even in such cases, inquiry and hearing of objections under Section 5A cannot ipso facto be dispensed with unless a notification under subsection (4) of Section 17 of the Act is issued. The legislative scheme is amply clear which merely enables the appropriate Government to issue such notification under sub 4 section (4) of Section 17 of the Act dispensing with inquiry under Section 5A if the Government intends to exercise the said power. The use of the expression 'may' in subsection (4) of Section 17 leaves no room of doubt that it is discretionary power of the Government to direct that the provisions of Section 5A would not apply to such cases covered by subsection (1) or (2) of Section 17 of the Act."

In *Mahender Pal's* case (*supra*) the land acquisition was for utilisation of land for residential/commercial purpose. Following was laid down in paragraph 16.

"16. It is a wellsettled principle of law that an exception carved out from the main provision as a result whereof a citizen of India may be deprived of his property particularly having regard to the fact that if it is considered to be a human right, procedural safeguards laid down therefor must be scrupulously complied with. It being an expropriatory legislation deserves strict construction. {See *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai and Others* [(2005) 7 SCC 627]; *Devinder Singh and Others v. State of Punjab and Others* [(2008) 1 SCC 728]; and *City Montessori School v. State of Uttar Pradesh & Ors.* [2009 (2) SCALE 740]}."

From the proposition as laid down by the apex Court in the aforesaid cases, it is clear that the State Government has to specifically apply its mind for invocation of subclause 4 of Section 17 even in cases where Section 17 (1) is invoked.

Invocation of Section 17 (4) is not automatic. The subjective satisfaction of the State Government has to be arrived at on the basis of relevant materials on the record.

Learned Standing Counsel has placed reliance on the judgment of the apex Court in Chameli Singh's case (supra). In the said case the apex Court had considered the affect of prenotification and post notification delay. It was laid down that the prenotification and post notification delay caused by the concerned officer does not create a cause to hold that there is no urgency. Following was laid down in paragraphs 14,15 and 16.

"14. The question, therefore, is whether invocation of urgency clause under Section 17 (4) dispensing with inquiry under Section 5A is arbitrary or is unwarranted for providing housing construction for the poor. In *Aflatoon vs. Lt. Governor, Delhi*, (1975) 4 SCC 285 at 290:(AIR 1974 SC 2077 at P.2080) a Constitution Bench of this Court had upheld the exercise of the power by the State under Section 17 (4) dispensing with the inquiry under Section 5A for the planned development of Delhi. In *Smt. Pista Devi's case* (AIR 1986 SC 2025), this Court while considering the legality of the exercise of the power under Section 17 (4) exercised by the State Government dispensing with the inquiry under Section 5A for acquiring housing accommodation for planned development of Meerut, had held that providing housing accommodation is national urgency of which Court should take judicial notice. The prenotification and post notification delay caused by the concerned officer does not create a cause to hold that there is no urgency. Housing conditions of Dalits all over the country continue to be miserable even till day is a fact of which courts are bound to take judicial notice. The ratio of *Deepak Pahwa's case* (AIR 1984 SC 1721) (supra) was followed. In that case a threeJudge Bench of this Court had upheld that notification issued under Section 17 (4), even though lapse of time of 8 years had occurred due to interDepartmental discussions before receiving the notification. That itself was considered to be a ground to invoke urgency clause. It was further held that delay on the part of the lethargic officials to take further action in the matter of acquisition was not sufficient to nullify the urgency which existed at the time of the issuance of the notification and to hold that there was never any urgency. In *Jage Ram V. State of Harayana* (1971) 1 SCC 671: (AIR 1971 SC 1033) this Court upheld the exercise of the power of urgency under Section 17 (4) and held that the lethargy on the part of the officers at an early stage was not relevant to decide whether on the day of the notification there was urgency or not. Conclusion of the Government that there was urgency, though not conclusive, is entitled to create weight. In *Deepak Pahwa's case* (AIR 1984 SC 2025) this Court had held that very often persons interested in the land proposed to be acquired may make representations to the concerned authorities against the proposed writ petition that is bound to result in multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often delay makes the problem more and more acute and increases urgency of the necessity for acquisition. Rajasthan Housing Board

v. Shri Kishan (1993) 2 SCC 84 at 91: (1993 AIR SCW 1163 at PP.116869) this Court had held that it must be remembered that the satisfaction under Section 17 (4) is subjective one and that so long as there is material upon which Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. In State of U.P. v. Keshav Prasad Singh (1995) 5 SCC 587 at 590: (1995 AIR SCW 3653 at P.3655) this Court had held that the Government was entitled to exercise the power under Section 17 (4) invoking urgency clause and to dispense with inquiry under Section 5A when the urgency was noticed on the facts available on record. In Nayarana Govind Gavate's case (AIR 1977 SC 183) (supra) a three Judge Bench of this Court had held that Section 17 (4) cannot be read in isolation from Section 4(1) and Section 5A of the Act. Although 30 days from the notification under Section 4(1) are given for filing objections under Section 5A inquiry thereunder unduly gets prolonged. It is difficult to see why the summary inquiry could not be completed quite expeditiously. Nonetheless, this Court held the existence of prima facie public purpose such as the one present in those cases before the Court, could not be successfully challenged at all by the objectors. It further held that it was open to the authority to take summary inquiry under Section 5A and to complete inquiry very expeditiously. It was emphasised that:

"....the mind of the Officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 50A which has to be considered."

15. It would thus be seen that this Court emphasised the holding of an inquiry on the facts peculiar to that case. Very often the officials, due to apathy in implementation of the policy and programmes of the Government, themselves adopt dilatory tactics to create cause for the owner of the land to challenge the validity or legality of the exercise of the power to defeat the urgency existing on the date of taking decision under Section 17 (4) to dispense with Section 5A inquiry.

16. It is true that there was prenotification and postnotification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry under Section 5A. As held by this Court, the delay by itself accelerates the urgency: Larger the delay, greater be the urgency. So long as the unhygienic conditions and deplorable housing needs of Dalits Tribes and the poor are not solved or fulfilled, the urgency continues to subsist. When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the Court, not being an appellate forum, would not disturb the finding unless the court conclusively finds the exercise of the power mala fide. Providing house sites to the Dalits, Tribes and the poor itself is a national problem, and a constitutional obligation. So long as the

problem is not solved and the need is not fulfilled, the urgency continues to subsist. The State is expending money to relieve the deplorable housing condition in which they live by providing decent housing accommodation with better sanitary conditions. The lethargy on the part of the officers for pre and postnotification delay would not render the exercise of the power to invoke urgency clause it valid on that account."

In the First Land Acquisition, Collector (supra) the issue of dispensation of inquiry under Section 5A was again considered. It was held by the apex Court that the question of urgency of acquisition under Section 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government. Following was laid down in paragraph 4.

"4.The question of urgency of an acquisition under Section 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Section 17 (1) and (4) of the Act, and issues Notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide.

Whether in a given situation there existed urgency or not is left to the discretion and decision of the concerned authorities. If an order invoking power under Section 17(4) is assailed, the Courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by nonapplication of mind. Any post Notification delay subsequent to the decision of the State Government dispensing with an enquiry under Section 5(A) by invoking powers under Section 17(1) of the Act would not invalidate the decision itself specially when no mala fides on the part of the government or its officers are alleged.

Opinion of the State Government can be challenged in a Court of law if it could be shown that the State Government never applied its mind to the matter or that action of the State Government is mala fide. Though the satisfaction under Section 17(4) is a subjective one and is not open to challenge before a Court of law, except for the grounds already indicated, but the said satisfaction must be of the Appropriate Government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Government that there was urgency even though cannot be conclusive but is entitled to great weight, as has been held by this Court in Jage Ram and others vs. The State of Haryana and Others AIR 1971 Supreme Court 1033. Even a mere allegation that power was exercised mala fide would not be enough and in support of such allegation specific materials should be placed before the Court. The burden of establishing mala fides is very heavy on the person who alleges it. Bearing in mind the

aforesaid principles, if the circumstances of the case in hand are examined it would appear that the premises in question was required for the students of National Medical College, Calcutta and the Notification issued in December 1982 had been quashed by the Court and the subsequent Notification issued on 25.2.1994 also had been quashed by the Court. It is only thereafter the Notification was issued under Section 4(1) and 17(4) of the Act on 29.11.1994 which came up for consideration before the High Court. Apart from the fact that there had already been considerable delay in acquiring the premises in question on account of the intervention by Courts, the premises was badly needed for the occupation of the students of National Medical College, Calcutta. Thus, existence of urgency was writ large on the facts of the case and therefore, said exercise of power in the case in hand, cannot be interfered with by a Court of law on a conclusion that there did not exist any emergency. The conclusion of the Division Bench of Calcutta High Court, therefore, is unsustainable."

As noticed above, in each case where Section 17(4) has been invoked it has to be considered as to whether there was sufficient material before the State Government for invocation of Section 17 (4). It is further well settled that in case where sufficient material is with the State Government to arrive at a subjective satisfaction, it is not for the Court to reassess the evidence and to substitute its opinion.

Now, we proceed to examine the facts of the present case and materials on record in the light of the above propositions. As noticed above, the proceedings for acquisition of two plots i.e. 1329 and 1339 were initiated after inspection and inquiry for the purpose of construction of 132 KV substation, Dayalbagh with an object that in Agra Taj Trepezium Area electricity has to be continuously supplied and due to nonavailability of the land in Dayalbagh, aforesaid two plots were chosen since near the aforesaid two plots there already exists 400 KV substation at Peeli Pokhar. All necessary reports and certificates were submitted before the Collector including the certificate in Prapatra 10 by which the Collector specifically recommended for dispensation of the inquiry by invoking Section 17 (4). There is another relevant material on the record i.e. the fax letter dated 28/6/2007, which was sent from the office of the Deputy General Manager, Electricity Distribution Division, Agra to the Secretary Energy, Lucknow in which a request was made for urgently issuing notification under Section 4(1)/17 of the Act. It is useful to note the contents of the said letter which is to the following effect.

The public purpose, for which the land was acquired was for construction of 132 KV substation, Dayalbagh. The construction of 132 KV substation, Dayalbagh for the purpose of supplying electricity is an urgent need, and in the proposal which was submitted before the Collector by the officers of the respondent no.4, it was clearly mentioned that for continuous supply of electricity in Agra Taj Trepezium area, construction of 132 KV substation, Dayalbagh land acquisition is necessary. Thus, there was sufficient material available before the State at the relevant time

for invoking Section 17(4). The mere fact that notification under Section 6 could be published on 22/7/2008, does not lead to the inference that there was no such urgency in the matter so as to invoke Section 17(4).

In the counter affidavit, filed on behalf of the respondent no.4, it has come on record that the amount of compensation could be deposited by the respondent no.4 on different dates as has been mentioned in paragraph 5 of the counter affidavit filed by B.S. Tripathi, Executive Engineer, Transmission Division U.P. Power Transmission Corporation Limited which is to the following effect.

"(i) Rs. 28,81,600/ which was 10% of total compensation & acquisition charges deposited on 14.11.2006.

(ii) Rs. 1,00,85,599/ (which was 70% of total compensation) was deposited on 29.1.2008 towards compensation as required under Section 6 (1) r/w Section 17 of the Act.

(iii) Rs. 2,82,750/ was deposited on 29.1.2008 towards rehabilitation/ reestablishment scheme, 2003.

(iv) Rs. 28,81,600/ was deposited on 9.9.2008 towards balance and remaining compensation."

The compensation amount being huge which could be deposited by the respondent no.4 up to 09/9/2008, the respondent no.4 could not take possession or proceed further earlier. It has also been submitted by the learned Standing Counsel that due to standing crop on the land in question some delay was caused in starting the construction. It has been further stated by the learned Standing Counsel that the cosharers of these two plots who have not challenged the acquisition proceedings have already received the compensation and the compensation of the petitioners have already been deposited. It has been submitted by the learned Standing Counsel before the Court that the construction of 132 KV substation, Dayalbagh is already in progress. Taking into consideration the over all facts and circumstances of the case, we are of the view that it is not a fit case for this Court to exercise its jurisdiction for quashing the notification dated 29/6/2007, issued under Section 4 read with Section 17 (1) and 17(4) and the notification dated 22/7/2008, issued under Section 6 of the Land Acquisition Act, 1894.

The writ petition is dismissed.