
(2008) 11 MP CK 0004
In the Madhya Pradesh High Court

Ambrish Kumar and Damodar Das and Others	APPELLANT
Vs	
The State of M.P. and Others	RESPONDENT

Date of Decision : 14-11-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4(1), 6
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2009) 3 MPHT 374

Hon'ble Judges : K.S. Chauhan, J; Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dipak Misra, J.—These two appeals have been preferred u/s 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, challenging the defensibility and sustainability of the order dated 8-8-2008 passed by the learned Single Judge in W.P. No. 8723/2007 and W.P. No. 8726/2007. Be it noted, the learned Single Judge has disposed of both the writ petitions in a composite manner and adverted to the facts in Writ Petition No. 8726/2007. As in Writ Appeal No. 960/2008 the assail is to order passed in Writ Petition No. 8726/2007, for the sake of clarity and convenience, we shall advert to the material facts and grounds urged in the said appeal.

2. The appellant is the owner of the land bearing Survey No. 957 admeasuring area 1.58 hectares at Village Morghari, District Khandwa. The said land was diverted by order dated 3-11-2005 u/s 172 of the M.P. Land Revenue Code, 1959 (for short "the Code") for construction of godown. The petitioner has availed a loan of Rs. 25.55 lacs from the State Bank of India, Sanawad Branch. A "no objection certificate" for construction of godown was also issued by the Gram Panchayat. As set forth, he has constructed a godown having capacity of 1000 MT which was sanctioned by the NABARD scheme. Various aspects were put forth about diversion and construction of the godown. Against this factual backdrop, it

was contended before the learned Single Judge that the respondent-State, without carrying out proper survey of the land, proposed a canal to be passed through the aforesaid land bearing Survey Nos. 925 and 957 and without application of mind, it issued a notification dated 8-8-2006 u/s 4 (1) of the Land Acquisition Act, 1894 (for short "the Act"). On the same day, a declaration u/s 6 was issued. It was also urged that the notification u/s 4 (1) of the Act was not published in the newspaper and the notification and declaration were issued on 8-8-2006. In the notification u/s 4 (1) of the Act, it was stipulated that the provision of Section 5-A of the Act would not be applicable as the urgency clause was invoked under the provision of Section 17(1) of the Act.

3. It was averred in the writ petition that before invocation of the urgency provision as per Section 17 of the Act, it was incumbent on the part of the appropriate Government to examine the urgency but no exercise was carried out in the said regard and further the Collector had himself invoked the urgency provision and not the State Government. It was further put forth that though the Secretary has power to grant permission for invocation of the urgency clause, yet the Commissioner on 11-8-2006 had granted the permission. It was highlighted that it was not a fit case where the urgency provision could have been invoked inasmuch as the power conferred u/s 5-A of the Act is a valuable right and a land owner cannot be deprived of the said right in an arbitrary manner. Various assertions have been made about the diversion of the land along with various other ancillary facets to highlight that an alternative sight could have been chosen and further that the rights of the petitioners had been throttled in a most arbitrary and capricious manner. It was also asseverated that no prior survey in respect of alignment of canal was done and hence, the entire exercise was vitiated.

4. On the basis of the aforesaid grounds, a prayer was made to issue a writ of certiorari for quashment of the notification issued u/s 4(1) and the declaration issued u/s 6 of the Act as per Annexures P-6 and P-7 to the writ petition.

5. The respondents in oppugnation submitted that the notifications under Sections 4 and 6 were not issued simultaneously; that the same notifications were assailed by other landholders before the Indore Bench of the High Court and the Indore Bench had dismissed the writ petition; that the notifications were issued after conducting necessary survey and the documents relating to the survey were available on record; that the construction of the entire canal is complete except for the area belonging to the writ petitioners; and as there is belated approach, there is no justification to quash the notifications.

6. The learned Single Judge upon hearing the learned Counsel for the parties referred to the decision rendered by the Indore Bench in W.P. No. 5659/06 and came to hold that the notification u/s 4(1) read with Section 17 (1) was issued on 8-8-2006 and was published in the Gazette dated 18-8-2006 and the notification issued u/s 6 of the Act was published in the gazette on 25-8-2006; that the notification u/s 4(1) and the notification published u/s 6 (2) are on

different dates; that the Commissioner has been delegated the power to grant sanction to invoke the provisions contained in Section 17 of the Act; that the ground that permission was granted on 11-8-2006 whereas the notification u/s 4 read with Section 17 (1) had already been issued on 8-8-06 does not merit consideration inasmuch as the document which has been placed reliance upon, Annexure P-8, does not disclose that such permission was given by the Commissioner on 8-8-2006; that the stand that no survey was done before issuing the notification under Sections 4 and 6 before invoking the urgency clause is unfounded and unacceptable, that the stance that there are houses constructed on their land and, therefore, their land could not have been acquired is sans substance as the land was acquired for public purpose and the land of the petitioners falls in the area on which the canal is to be constructed; that the path of the canal cannot be deviated for the convenience of any individual land owner or on the ground that there is construction existing on the land; that there is material on record to the effect that the entire construction of the canal is already complete excepting the area consisting of the petitioners' land and 2-3 small pieces of land which are in dispute; that the fund of the project having been provided by the Central Government under the Accelerated Irrigation Benefit Programme and the loan having been procured from NABARD and other sources, there is no justification to cancel the notification.

7. Questioning the legal validity of the order passed by the learned Single Judge, Mr. Rajendra Tiwari, learned Senior Counsel, has raised the following contentions:

(a) The Writ Court has committed illegality in its appreciation of the factual matrix on the anvil of the settled law and erred in not holding that the urgency clauses should not have been invoked in the case at hand.

(b) The learned Single Judge has fallen into grave error by not accepting the submission that there has been simultaneous publication of notifications under Sections 4 and 6 of the Act and that alone vitiates the issue of the notifications.

(c) The learned Single Judge has misconstrued the documents brought on record in arriving at the conclusion that the notifications have been issued on different dates though actually it is not so.

(d) Before invoking the urgency clause for issue of the notifications the permission from the State Government was a condition precedent but the same having not been done, the entire exercise of issuance of notifications is sensitively susceptible and on that ground, they are liable to be quashed.

(e) The vital and valuable right conferred on the land-owner u/s 5-A of the Act has been curbed and throttled and for such curtailment, statutory measures are to be taken in an appropriate and objective manner but when the same has been done in a most capricious manner throwing all norms to the winds, the notifications are liable to be lanced.

(f) The action of the authority is reeked with malafide and once malafide enters

into any arena of decision making process, the same has to be regarded as vulnerable and to be axed in exercise of power of judicial review.

(g) Once materials have been produced before the Court to the effect that constructions have been raised by land owners, the authorities should have been well advised to exclude such constructed areas and not to affect the rights of the petitioners.

To bolster the aforesaid submissions, the learned Senior Counsel has placed reliance on the decisions rendered in *State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others*, ; *Jagdish Chand and Anr. v. State of Haryana and Anr.* (2005) 10 SCC 162; and *Ram Krishan Mahajan Vs. Union Territory of Chandigarh and Others*, .

8. Mr. Kumaresh Pathak, learned Deputy Advocate General for the State, supported the order passed by the learned Single Judge contending, inter alia, that all the issues that had been raised by the petitioner in the writ petition have been appositely and appropriately dealt with by the learned Single Judge and no error can be found with the same.

9. First we shall deal with the facet whether the notifications were issued for public purpose and whether there was necessity to invoke the urgency clause. Submission of Mr. Tiwari, learned Senior Counsel, is that only under unavoidable circumstances, Section 17 of the Act is to be invoked and the same cannot be taken recourse to in a mechanical manner. It is canvassed by him that the circumstances cannot be said to be such which could not brook delay and it was not an unforeseen situation. It is put forth by him that the petitioners should have been allowed to file their objections u/s 5 of the Act. As is evincible from the stand of the respondents, in order to generate electricity and with the intention to use the water of river Narmada for irrigation, four major projects, i.e., Bargi Indira Sagar Project, Omkareshwar Project, Maheshwar Project in the State of M.P. and Sardar Sarovar Project in the State of Gujarat were planned to be constructed, out of which, Bargi, Indira Sagar and Sardar Sarovar Dams have been completed. Omkareshwar Dam is on the verge of completion and Maheshwar Project is under progress. It is canvassed that Omkareshwar Project is situated at River Narmada 40 kms downstream of Indira Sagar Project near Omkareshwar Temple in Khandwa District. Omkareshwar Project is a multipurpose project with an installed capacity of 520 MW with designed annual energy generation of 1166 million units and annual irrigation of 2.83 lacs hectares. The culturable command area is 1.47 lacs hectare generation of power. Omkareshwar Project is directly related to regulate release of water from ISP and, therefore, it is the most beneficiary project of the Narmada Complex. The entire canal system has been divided in four phases. A chart has been produced indicating the phase, canal reach, proposed irrigation and year of completion. In Phase I, the year of completion is 2008-09 and proposed irrigation area is 24,000 hectare. Phase II is to be completed in the year 2008-09 and its proposed irrigation area is 17766 hectare. Phase III is to be completed in the

year 2009-10 and it covers 50424 hectares and as regards Phase IV the completion year is 2010-2011 and 54630 hectare is proposed for irrigation. By this canal system 529 villages situated at Khandwa, Khargone and Dhar districts are likely to be benefited. Total 950 hectare of land is required for construction of the canal system of Phase I and about 132 villages are to be affected. The expenditure incurred on the Omkareshwar Project Canal upto August, 2007 is about Rs. 80 crores. The fund for completion of the canal system is being provided by the Central Government under the "Accelerated Irrigation Benefit Programme" (AIBP) and loan by NABARD under RIDF XII. It is contended that if these grants are not used timely, then the entire amount would be lapsed and due to delay, the cost of the project would be increased heavily. The land is to be acquired for the purpose of left bank canal. The facts and figures have been given in detail about the enormity of the project.

10. It is worth noting that the petitioners have small patches of land situated at Khargone and Khandwa Districts. Regard being had to the purpose of acquisition of land and the fact that a large tract is required, the question arises whether the invocation of the urgency clause was necessary or not.

11. In *Dora Phalauli Vs. State of Punjab and Others*, , it has been held that for making the provision of Sub-section (1) of Section 17 applicable, there must be an urgency in the matter of taking immediate possession. It has been ruled therein that it is to be remembered that the right of a person having any interest in the property to file an objection u/s 5-A of the Act should not be interfered with in such a casual or cavalier manner.

12. In the case of *State of Punjab and Another Vs. Gurdial Singh and Others*, , it has been held as under:

16. ...It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry u/s 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power.

13. In *Chandramani Sahu and Others Vs. State of Orissa and Others*, , the Division Bench of the High Court of Orissa has expressed the view as under:

4. ...The use of emergency powers cannot be a usual feature and only in extraordinary circumstances the same can be applied. It is only where the emergency is of such a nature that it would not brook a delay of 30 days, the time requisite for filing an objection, that the emergency provisions can be resorted to. The State has to justify, if questioned, that any delay would have frustrated the purpose for which the acquisition was sought to be made and/or that great

prejudice and inconvenience would have been caused. A valuable right is conferred by Section 5-A and a person whose land is sought to be acquired has a right to make representation. If the State wants to take away this valuable right of participation, it has to justify its action by showing existence of emergent situations. The emergency provisions cannot be applied casually. The purpose for which a party is granted an opportunity of filing its objections in mani-fold, in an appropriate case it can establish absence of public purpose and even suggest alternative sites....

Their Lordships further proceeded to state as under:

...While it cannot be gainsaid that it depends upon subjective satisfaction of the State Government as to in which cases the emergency provisions are to be applied, yet the Court can consider whether the situations warranted resort to the emergency provisions. It can also consider whether such emergent situations existed when enquiry u/s 5-A was dispensed with. Authorities have to indicate basis for the conclusion that there was an urgency which necessitated elimination of summary proceedings u/s 5-A. It is not just the existence of urgency, but the need to dispense with hearing of objections u/s 5-A, which has to be established by the authorities.

14. In *Bhoomandal Singh Vs. State of M.P. and Others*, , it has been held as follows:

...It is settled law that urgency provision can be invoked only in those cases where it is not possible for the State Government or Acquiring Authority to wait for a long period or where the purpose is such as would not brook delay of more than thirty days. It was apparent from the facts and it was not a case which could not brook the delay of 30 days. As such dispensing with the requirement of Section 5-A was not proper.

15. In *Om Prakash and Another Vs. State of U.P. and Others*, , a two-Judge Bench of the Apex Court, while dealing with the grounds for invocation of urgency clause and dispensation with inquiry u/s 5-A, expressed that the scheme of the Act has to be kept in view and after referring to Section 17 of the Act, held thus:

...If the urgency was of such a nature that it could not brook the delay on account of Section 5-A proceedings, it is difficult to appreciate as to why Section 6 notification in the present case could be issued only after one year from the issuance of Section 4 notification. No explanation for this delay is forthcoming on record. This also shows that according to the State Authorities, there was no real urgency underlying dispensing with Section 5-A inquiry despite NOIDA suggesting at the top of its voice about the need for urgently acquiring the lands for the development of Sector 43 and other sectors....

16. In *Siyaram and Ors. v. State of M.P. and Ors.* 1999(2) J.L.J. 361, a Division Bench of this Court, while dealing with a notification issued u/s 4(1) read with

Section 17 of the Act, expressed the view that the Courts have to see public interest vis-a-vis private interest while exercising power under Article 226 of the Constitution of India.

17. In Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, , a two-Judge Bench of the Apex Court has opined thus:

17. Section 17 confers extra-ordinary powers on the authorities under which it can dispense with the normal procedure laid down u/s 5-A of the Act in exceptional case of urgency. Such powers cannot be lightly restored to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable, it may be by itself not sufficient to take aid of Section 17 to use this extra-ordinary power as use of such power deprives a land owner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry u/s 5-A of the Act. The Authority must have subjective satisfaction of the need for invoking urgency clause u/s 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor, i.e., whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry u/s 5-A of the Act could be completed. In other words, if power u/s 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extra-ordinarily depending on situations such as due to earthquake, flood or some specific time bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with the law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the Acquiring Authority, while applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration.

18. In Union of India (UOI) and Others Vs. Mukesh Hans etc., , it has been held in Paragraphs 31 and 32 as under:

31. Section 17 (4) as noticed above provides that in cases where the appropriate Government has come to the conclusion that there exists an urgency or unforeseen emergency as required under Sub-section (1) or (2) of Section 17 it may direct that the provisions of Section 5-A shall not apply and if such direction is given then Section 5-A inquiry can be dispensed with and a declaration may be made u/s 6 on publication of Section 4(1) notification and possession can be made.

32. A careful perusal of this provision which is an exception to the normal mode

of acquisition contemplated under the Act shows mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17 (4) that by itself is not sufficient to direct the dispensation of Section 5-A inquiry. It requires an opinion to be formed by the concerned Government that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the Legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It also indicates that the mere existence of an urgency u/s 17 (1) or unforeseen emergency u/s 17 (2) would not by themselves be sufficient for dispensing with Section 5-A inquiry. If that was not the intention of the Legislature then the latter part of Sub-section (4) of Section 17 would not have been necessary and the Legislature in Section 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with. But then that is not language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5-A inquiry does not mean that in and every case when there is an urgency contemplated u/s 17 (1) and unforeseen emergency contemplated u/s 17(2) exists that by itself would not contain the need for dispensing with Section 5-A inquiry. It is possible in a given case the urgency noticed by the appropriate Government u/s 17 (1) or the unforeseen emergency u/s 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry u/s 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies contemplated u/s 17 (1) and (2) of the Act.

19. The present factual matrix is to be tested on the anvil and touchstone of the aforesaid pronouncement of law. On a studied scrutiny of the principles enunciated in the aforesaid decisions, it is luminescent that a satisfaction has to be reached on germane and cogent reasons; there has to be proper and apposite application of mind; the power of invoking urgency clause being extra-ordinary, the real urgency must emanate from the situation; it is necessary to consider whether the delay would defeat the purpose; it is to be scrutinised whether the lethargy of the State has been substituted by taking recourse to the urgency clause; it is to be scanned whether the rights of the citizens have been curtailed and abridged in an arbitrary manner; and whether the urgency or the unforeseen urgency is of such a degree that the enquiry u/s 5-A has to be dispensed with and whether the special powers have been adequately and appositely exercised to marginalise the minimal right that the statute conferred on the citizen to file his objection.

20. In the case at hand, it is evident that the project is enormous in nature; that finance was made available by the Central Government under the "Accelerated

Irrigation Benefit Programme" (AIBP) and loan by NABARD under RIDF XII; that the entire canal work was to be carried out in four phases; that the projects were already to be worked out; that the Omkareshwar Project was near completion and the work of Maheshwar Project was under progress; that the construction of Phase-I canal had been taken for execution; that huge expenditure is involved in the project; that there was a time factor for the canal project and hence, the invocation of urgency clause cannot be really found fault with.

21. In this regard, we may refer with profit to the decision rendered in *First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another*, , wherein it has been held as under:

The question of urgency of an acquisition under Sections 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 Sections 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.

Regard being had to the totality of circumstances, it cannot be said there was no urgency. In fact, there has been application of mind in invoking the urgency clause and there is no mala fide intention in such a decision.

22. The next contention that requires to be addressed to is whether the notifications issued u/s 4 and Section 6 of the Act are simultaneous and hence, they are not sustainable. In this context, it is apposite to refer to the decision in *Radhey Shyam Nigam (supra)*, wherein it has been held that declaration u/s 6 has to be issued only after issue of notification u/s 4 even where urgency provisions of Section 17 are invoked in view of the expression "after the date of the notification" in the amendment to Section 17(4).

23. In the case at hand, the notification for acquisition of the land u/s 4 (1) read with Section 17 (1) was published in M.P. Rajpatra dated 18-8-2006. The notification u/s 6 of the Act was published in M.P. Rajpatra on 25-8-2008. The same is clearly evincible from Annexures R-5 and R-6 brought on record by the respondent-State.

24. The next aspect that requires to be dwelled upon is whether there has been wide publication of the notifications and causation of public notice by the Collector with regard to the notifications. Section 4 (1) stipulates that whenever it appears to the appropriate Government that land in locality is needed or is likely to be needed for any public purpose or for a Company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language

and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. In the case at hand, the notifications issued u/s 4(1) read with Section 17(1) was published in the Official Gazette and published in two State level newspapers, namely, Nav Bharat and Dainik Bhaskar. Section 6 (2) of the Act stipulates that every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language. Needless to say, the other conditions are attached to it. We have already indicated that the notification was published in the Official Gazette. The notification issued u/s 6 of the Act has been published in Dainik Bhaskar and Choutha Sansar. Thus, it is manifest that there has been wide publication of the preliminary notification and the declaratory notification.

25. In *Radhey Shyam Nigam and others* (supra), the Apex Court held that simultaneous publication of notification u/s 4 (1) and declaration u/s 6 is invalid after the Amending Act 68 of 1984. As has been pointed out, the notification u/s 4(1) read with Section 17(1) was issued on 8-8-06 and the same was published in the Official Gazette on 18-8-06 and the declaration u/s 6 has been published on 25-8-06. As has been stated above, there has been publication in two widely circulated daily newspapers. Thus, it is quite clear that the notification u/s 4(1) and the declaration u/s 6 (2) of the Act were not simultaneous to attract the law laid down in the case of *Radhey Shyam Nigam* (supra). That apart, there has been wide publication as per the assertions made in the counter-affidavit and the document brought on record.

26. The next ground of attack by the learned Senior Counsel for the appellant is that the State Government should have granted sanction for invoking the urgency clause but the same has not been done. The learned Single Judge has adverted to the same and come to hold that the State Government by notification dated 15-2-99 published in the M.P. Gazette dated 5-3-99 has already delegated the powers to the Commissioner of the Division and, therefore, the notification issued by the Commissioner cannot be treated as invalid as he has the delegated powers to grant such permission. The learned Single Judge has also discussed in detail how the Commissioner has dealt with the matter and not the Collector and hence, we do not find any substance in the said assail.

27. The other two planks of challenge are that there has been no prior survey, and that the constructions exist on the area and, therefore, the Government was under obligation to exclude the said area from acquisition. In Annexure P-4, as alleged, payment was made to the Surveyor but no survey was done. A reply was filed stating, inter alia, that a notice inviting applications for pre-qualification and the tender forms clearly stipulated that the scope of work would include the work of survey, design, preparation of plans and estimates, etc. Thus, the challenge that there was no survey melts into insignificance.

28. The next question that arises for consideration is when there is construction on the land of the petitioners, the land should have been excluded. In this

regard, reliance has been placed on the decisions rendered in Jagdish Chandra (supra). In the said case, a three-Judge Bench of the Apex Court was not dealing with a case u/s 4 (1) of the Act wherein the emergency clause was invoked. That apart, Their Lordships referred to the decision rendered in Sube Singh and Others Vs. State of Haryana and Others, , and opined that the directions given in Sube Singh (supra), should be given effect to subject to certain restrictions to take care of the planned development of the area. In the case of Sube Singh (supra), the Apex Court had taken the view that certain structures deserved exclusion from acquisition. Regard being to the said pronouncement of law in Jagdish Chandra (supra), Their Lordships directed that as far as possible, the respondents shall try to retain the structure unless it becomes difficult for them to have a planned development without removing the same. Their Lordships observed that directions were issued on the peculiar facts of the case and not founded in general application. The said decision is distinguishable inasmuch as in the case at hand, a canal has to be constructed and, therefore, structure standing on the land would definitely cause impediment since the course of the canal cannot be diverted to suit the interest of an individual. Our attention has been invited to the decision rendered in Ramkrishan Mahajan (supra). In the said case, Their Lordships were dealing with a batch of appeals under the provisions of the Punjab Municipalities Act, 1911. The question that arose for consideration was whether certain land ought to be released from acquisition u/s 48 of the Land Acquisition Act. Their Lordships opined that such exclusion does not itself satisfy that there was discrimination in the matter of acquisition of land. Their Lordships have noted certain facts to find out that the lands which were exempted from acquisition in exercise of powers conferred by Section 48 of the Act was based on appropriate factual base. In the case at hand, the challenge is not the same and, in fact, the singular grievance that has been agitated is that once structures have been raised, the same should have been excluded from the purview of acquisition. The submission is made on the foundation as if the said principle operates on absolute terms for the purpose of exclusion. It depends on various facts. In the present case, as we perceive, a canal has to be dug to facilitate irrigation and, therefore, acquisition of constructions of an individual interest has to yield to a larger public interest. The said concept has to be given priority. That apart, no case is made out that the canal has been diverted at any point of time for some individual interest. In any case, the course of the canal is a matter to be adverted to by the experts and not by the Court. Mere bald assertions would not even remotely attract the concept of discrimination.

29. In view of the foregoing analysis, we do not perceive any merit in any of the submissions put forth by the learned Senior Counsel appearing for the appellants, and accordingly, the writ appeals, being sans substratum, stand dismissed. In the facts and circumstances of the case, there shall be no order as to costs.