

(2012) 09 SC CK 0057

In the Supreme Court Of India

Case No : C.A. No. 6387 of 2012 (Arising out of SLP (C) No. 20831 of 2008)

Bharat Sewak Samaj

APPELLANT

Vs

LT. Governor and Others

RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 300A
Industries (Development and Regulation) Act, 1951 — Section 18AA
Land Acquisition Act, 1894 — Section 11, 16, 17, 17(1), 17(1)A

Citation : (2012) 9 SCALE 3 : (2012) 12 SCC 675

Hon'ble Judges : Gyan Sudha Misra, J;G.S. Singhvi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. This is an appeal for setting aside the order passed by the Division Bench of the Delhi High Court whereby the writ petition filed by the Appellant for quashing the acquisition of its land was dismissed.

3. The Appellant is a Society registered under the Societies Registration Act, 1860. It purchased 12 bighas 5 biswas land comprised in khasra Nos. 301 and 493/302, Village Ladha Sarai, Delhi vide sale deed dated 22.2.1962, which was registered on 10.4.1962. After purchasing the land, the Appellant constructed Night Shelter, Mahila Shilp Kala Kendra, Balwari, Charitable Medical Dispensary, Ashram, Library etc.

4. In January 1969, the Central Government initiated proceedings for the acquisition of the Appellant's land. For this purpose, Notification u/s 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was issued on 6.1.1969. After the issue of declaration u/s 6(1), the Land Acquisition Collector passed an award sometime in 1975. The Appellant challenged the acquisition proceedings in Suit No. 274/1975 which was decreed by the learned Single Judge of the Delhi High

Court vide judgment dated 7.5.1993. The learned Judge held that the Notifications issued under Sections 4 and 6 of the Act were illegal and without jurisdiction and the same did not affect the Appellant's right to remain in possession of the suit property. The operative portion of the judgment reads as under:

I accordingly pass a decree in favour of the Plaintiff and against the Defendants declaring that the acquisition of the suit land under the provisions of the Land Acquisition Act of 1894, as stated above, was illegal and without jurisdiction, and did not affect the rights of the Plaintiff to continue in possession of the said property consisting of the land and superstructures raised thereon. No order as to costs.

5. After 11 years and 2 months, the Government of NCT of Delhi issued Notification dated 6.7.2004 u/s 4(1) read with Section 17(1) and (4) of the Act for the acquisition of the Appellant's land for the specified public purpose, i.e., development of Mehrauli Heritage Zone under the planned development of Delhi. The declaration issued u/s 6(1) was published vide Notification dated 12.8.2004. On the same day, another notification was issued authorising Land Acquisition Collector (South), Delhi to take possession of the land. For the sake of reference, Notification dated 6.7.2004 is reproduced below:

GOVERNMENT of THE NATIONAL CAPITAL TERRITORY OF DELHI LAND & BUILDING DEPARTMENT

Vikas Bhawan, New Delhi.

No. F9(60)/2003/L&B/LA/6084 Dated: 6.7.2004

NOTIFICATION

Whereas it appears to the Lt. Governor, Delhi that land is likely to be required to be taken by Government at the public expense for a public purpose namely for development of Mehrauli Heritage Zone under Planed Development of Delhi. It is hereby notified that the land in the locality described below is likely to be acquired for the above purpose. The notification is made, under the provisions of Sub-Section 1 of Section 4 of Land Acquisition Act, 1984, to all whom it may concern. In exercise of the powers conferred by the aforesaid section, the Lt. Governor, Delhi is pleased to authorize the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey the land in the locality and to all other acts required or permitted by that section.

The Lt. Governor, Delhi is satisfied also that provisions of Sub-section (1) of the Section 17 of the said Act are applicable to this land and is further pleased under Sub-section (4) of the said section to direct that all the provisions of Section 5(A) shall not apply.

By order and in the name of the Lt. Governor of Delhi.

Sd/- (LAL SINGH) DY. SECRETARY (LA)

6. The Appellant questioned the legality of Notifications dated 6.7.2004 and 12.8.2004 in Writ Petition (C) No. 14609/2004 on several grounds including the following:

- i) There was no urgency which could justify invoking of Section 17(1) and (4) and dispensing with the application of Section 5A.
- ii) The exercise of power by the Government was vitiated by arbitrariness and mala fides.

7. In the counter affidavit filed on behalf of Respondent Nos. 1 and 2, it was pleaded that the Appellant's land was acquired for a public purpose i.e. development of Mehrauli Heritage Zone and, therefore, it cannot be said that the exercise of power by the competent authority is vitiated by arbitrariness and mala fides. On the issue of invoking of urgency provisions, the following averments were made:

In reply to grounds mentioned in the writ petition paras A to I, it is submitted that no just, tenable ground has been taken by the Petitioners, challenging the notifications, issued under Sections 4, 6 and 17(1) of the Land Acquisition Act. It is submitted that the Hon'ble Supreme Court has in catena of decision has held that the government is within its jurisdiction to issue notification again for the same purpose in respect of the same land. There is no bar in issuing a fresh notification for acquisition of the land in case earlier notification has lapsed or has been struck down. It is stated that there is no colourable exercise of power as the Government is in its jurisdiction to issue a fresh notification in respect of the land which was invited earlier and has lapsed for one reason or the other.

That the preservation and protection of Heritage Area is of utmost importance hence, in order to implement the scheme of planned development of Delhi, the planned Development of Mehrauli Heritage area is of utmost public importance hence, the land was urgently required which led to invocation of urgency clause of Section 17(1) after due satisfaction and proper application of mind by the competent authority. The aforesaid notification was issued invoking Section 17(1) only after the competent authority considered the urgency and applied its mind with due consideration.

8. Similar affidavit was filed on behalf of Respondent No. 5.

9. The Division Bench of the High Court did not advert to the principal grounds on which the Appellant had questioned the acquisition of its land and dismissed the writ petition by simply observing that the quashing of the earlier proceedings did not denude the appropriate Government of its jurisdiction to acquire the land and that the time gap of 10 years between the quashing of the earlier proceedings and the issuance of notifications in 2004 did not vitiate the subsequent acquisition.

10. We have heard learned Counsel for the parties. The questions which require consideration by this Court are whether the public purpose for which the

Appellant's land was acquired warranted invoking of Section 17(1) of the Act and whether the High Court was justified in dismissing the writ petition without examining the Appellant's plea that the enquiry envisaged u/s 5A could not have been dispensed with.

11. In our view, the decision of Lieutenant Governor, Delhi to invoke the urgency provisions was ex-facie illegal apart from being wholly arbitrary and unjustified. It was neither the pleaded case of Respondent Nos. 1 and 2 before the High Court nor any material was produced to show that the task of developing Mehrauli Heritage Zone under planned development of Delhi was being executed on an emergency basis. It was also not the pleaded case of Respondent Nos. 1 and 2 that the public purpose specified in Notification dated 6.7.2004 would have been defeated if the Appellant was given an opportunity to file objections u/s 5A(1) and its representative was given an opportunity of personal hearing in terms of Section 5A(2). Therefore, there was no justification, legal or otherwise, for invoking Section 17(1) of the Act. Lieutenant Governor, Delhi who sanctioned the invoking of urgency provisions was duty bound to keep in mind that the acquisition of one's land is a serious matter and, except in the cases of real urgency, no person can be deprived of his property without being afforded an opportunity to file objection u/s 5A(1) and without the sanction of law and without complying with the basics of natural justice. Section 5A represents the statutory embodiment of the rule of audi alteram partem and unless there are compelling reasons, the State cannot invoke the urgency provision contained in Section 17(1) and dispense with the application of Section 5A. The amplitude, ambit and width of the rule of audi alteram partem was lucidly stated by the three-Judge Bench in Sayeedur Rehman Vs. The State of Bihar and Others, in the following words:

...This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties.

12. In Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, Krishna Iyer, J. speaking for himself, Beg, C.J. and Bhagwati, J. highlighted the importance of the rule of hearing in the following words:

Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication. to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy Government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam-and of Kautilya's Arthashastra-the rule of law has had this stamp of natural justice

which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.

Once we understand the soul of the rule as fair play in action-and it is so-we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more-but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Textbook excerpts and ratios from rulings can be heaped, but they all converge to the same point that *audi alteram partem* is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation.

13. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, Bhagwati, J.* speaking for himself and Untwalia and Fazal Ali, JJ. observed:

...The *audi alteram partem* rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the *audi alteram partem* rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the *audi alteram partem* should be wholly excluded. The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that natural justice is pragmatically flexible and is amenable to capsulation under the

compulsive pressure of circumstances'. The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

14. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, the majority of the three-Judge Bench held that the rule of audi alteram partem must be complied with even when the Government exercises power u/s 18AA of the Industries (Development and Regulation) Act, 1951 which empowers the Central Government to authorise taking over of the management of industrial undertaking. Sarkaria, J. speaking for himself and Desai, J. referred to the development of law relating to applicability of the rule of audi alteram partem to administrative actions, noticed the judgments in *Ridge v. Baldwin* 1964 AC 40, *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, *Mohinder Singh Gill v. Chief Election Commr. (supra)*, *Maneka Gandhi v. Union of India (supra)* and *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, and quashed the order passed by the Central Government for taking over the management of the industrial undertaking of the Appellant on the ground that opportunity of hearing had not been given to the owner of the undertaking and remanded the matter for fresh consideration and compliance with the rule of audi alteram partem.

15. In *Munshi Singh and Others Vs. Union of India (UOI)*, the three-Judge Bench of this Court emphasised the importance of Section 5A in the following words:

...Sub-section (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 decision of the appropriate Government on the objections is then final. The declaration u/s 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector u/s 5A(2). 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. [See Section 17(4) of the Acquisition Act.]

16. In *State of Punjab and Another Vs. Gurdial Singh and Others*, Krishna Iyer, J. emphasised the necessity of reasonableness and fairness in the State action of invoking the urgency provision in the following words:

...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 preemptive 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.

17. In *Shyam Nandan Prasad and Others Vs. State of Bihar and Others*, , this Court reiterated that compliance with Section 5A is mandatory and observed as under:

...The decision of the Collector is supposedly final unless the appropriate Government chooses to interfere therein and cause affectation, suo motu or on the application of any person interested in the land. These requirements obviously lead to the positive conclusion that the proceeding before the Collector is a blend of public and individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notification, giving him the opportunity of objecting to the acquisition and awakening him to such right. That the objection is to be in writing, is indicative of the fact that the enquiry into the objection is to focus his individual cause as well as public cause. That at the time of the enquiry, for which prior notice shall be essential, the objector has the right to appear in person or through pleader and substantiate his objection by evidence and argument.

18. The ratio of *Munshi Singh v. Union of India* (supra) has been reiterated and followed in *Union of India (UOI) and Others Vs. Mukesh Hans etc.*, , *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, and *Anand Singh and Another Vs. State of Uttar Pradesh and Others*,

19. The invoking of Section 17(1) and (4) became subject matter of consideration in *Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others*, . In that case, the acquisition of land for construction of tenements for the 4th phase of subsidised industrial housing scheme sponsored by the State Government, as also for general improvement and Street Scheme No. XX of Kanpur Development Board by issuing notification u/s 4 read with Sections 17(1), (1-A) and (4) was challenged. The learned Single Judge and the Division Bench of the Allahabad High Court negated the Appellants' challenge by observing that once Section 17 is invoked, there was no necessity to hold enquiry u/s 5A. This Court set aside the order of the Division Bench of the High Court and held:

...It will be seen that Section 17(1) gives power to the Government to direct the Collector, though no award has been made u/s 11, to take possession of any waste or arable land needed for public purpose and such land thereupon vests absolutely in the Government free from all encumbrances. If action is taken u/s 17(1), taking possession and vesting which are provided in Section 16 after the award u/s 11 are accelerated and can take place fifteen days after the publication of the notice u/s 9. Then comes Section 17(4) which provides that in the case of any land to which the provisions of Sub-section (1) are applicable,

the Government may direct that the provisions of Section 5A shall not apply and if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4(1). It will be seen that it is not necessary even where the Government makes a direction u/s 17(1) that it should also make a direction u/s 17(4). If the Government makes a direction only u/s 17(1) the procedure u/s 5A would still have to be followed before a notification u/s 6 is issued, though after that procedure has been followed and a notification u/s 6 is issued the Collector gets the power to take possession of the land after the notice u/s 9 without waiting for the award and on such taking possession the land shall vest absolutely in the Government free from all encumbrances. It is only when the Government also makes a declaration u/s 17(4) that it becomes unnecessary to take action u/s 5A and make a report thereunder. It may be that generally where an order is made u/s 17(1), an order u/s 17(4) is also passed; but in law it is not necessary that this should be so. It will also be seen that under the Land Acquisition Act an order u/s 17(1) or Section 17(4) can only be passed with respect to waste or arable land and it cannot be passed with respect to land which is not waste or arable and on which buildings stand.

20. In *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, , this Court while approving the judgment of the Bombay High Court, which had quashed the acquisition made u/s 4 read with Sections 17(1) and 17(4), held as under:

Now, the purpose of Section 17(4) of the Act is, obviously, not merely to confine action under it to waste and arable land but also to situations in which an inquiry u/s 5A will serve no useful purpose, or, for some overriding reason, it should be dispensed with. 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 u/s 5A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry u/s 5A which has to be considered.

In the case before us, the public purpose indicated is the development of an area for industrial and residential purposes. This, in itself, on the face of it, docs not call for any such action, barring exceptional circumstances, as to make immediate possession, without holding even a summary enquiry u/s 5A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries u/s 5A of the Act to be completed without any impediment whatsoever to the execution of the scheme. Therefore, the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry u/s 5A of the Act.

All schemes relating to development of industrial and residential areas must be urgent in the context of the country's need for increased production and more residential accommodation. Yet, the very nature of such schemes of development does not appear to demand such emergent action as to eliminate summary

enquiries u/s 5A of the Act.

21. In *Union of India v. Mukesh Hans* (supra), this Court interpreted Sections 5A and 17 and observed:

A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that 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 the Section 5A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5A inquiry. It also indicates that mere existence of an urgency u/s 17(1) or unforeseen emergency u/s 17(2) would not by itself be sufficient for dispensing with Section 5A 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 Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5A inquiry will be dispensed with. But then that is not the language of the section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5A inquiry in spite of the existence of unforeseen emergency....

An argument was sought to be advanced on behalf of the Appellants that once the appropriate Government comes to the conclusion that there is an urgency or unforeseen emergency under Sections 17(1) and (2), the dispensation with inquiry u/s 5A becomes automatic and the same can be done by a composite order meaning thereby that there is no need for the appropriate Government to separately apply its mind for any further emergency for dispensation with an inquiry u/s 5A. We are unable to agree with the above argument because Sub-section (4) of Section 17 itself indicates that the 'Government may direct* that the provisions of Section 5A shall not apply' which makes it clear that not in every case where the appropriate Government has come to the conclusion that there is urgency and under Sub-section (1) or unforeseen emergency under Sub-section (2) of Section 17, the Government will ipso facto have to direct the dispensation of the inquiry.

22. In *Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others*, this Court approved the quashing of the acquisition proceedings by the High Court and observed:

Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down u/s 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted 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 is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry u/s 5A 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 landowners and the inquiry u/s 5A 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 extraordinarily 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 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.

23. In *Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another*, this Court again dealt with the question whether the State was justified in invoking Sections 17(1) and 17(4) and dispensing with the inquiry u/s 5A and held:

Section 17, no doubt, deals with special situations and exceptional circumstances covering cases of 'urgency' and 'unforeseen emergency'. In case of 'urgency' falling under Sub-section (1) of Section 17 or of 'unforeseen emergency' covered by Sub-section (2) of Section 17, special powers may be exercised by appropriate Government but as held by a three-Judge Bench decision before more than four decades in *Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others*, and reiterated by a three Judge Bench decision in *Union of India (UOI) and Others Vs. Mukesh Hans etc.*, even in such cases, inquiry and hearing of objections u/s 5A cannot ipso facto be dispensed with unless a notification under Sub-section (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-section (4) of Section 17 of the Act dispensing with inquiry u/s 5A if the Government intends to exercise the said power. The use of the expression 'may' in Sub-section (4) of Section 17 leaves no room for doubt that it is a discretionary power of the Government to direct that the provisions of Section 5A would not apply to such cases covered by Sub-sections (1) or (2) of Section 17 of the Act.

In our opinion, therefore, the contention of the learned Counsel for the

Respondent authorities is not well founded and cannot be upheld that once a case is covered by Sub-sections (1) or (2) of Section 17 of the Act, Sub-section (4) of Section 17 would necessarily apply and there is no question of holding inquiry or hearing objections u/s 5A of the Act. Acceptance of such contention or upholding of this argument will make Sub-section (4) of Section 17 totally otiose, redundant and nugatory.

24. In *Anand Singh v. State of U.P.* (supra) the two-Judge Bench considered the question whether the State Government was justified in invoking Section 17(4) for the acquisition of land for residential colony to be constructed by Gorakhpur Development Authority, Gorakhpur. The Court noted that notifications u/s 4(1) read with Sections 17(1) and 17(4) were issued on 23-11-2003 and 20-2-2004 and declaration u/s 6(1) was issued on 24-12-2004, referred to 16 judicial precedents including those noticed hereinabove and held:

The exceptional and extraordinary power of doing away with an enquiry u/s 5A in a case where possession of the land is required urgently or in an unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry u/s 5A. Exceptional the power, the more circumspect the Government must be in its exercise. The Government obviously, therefore, has to apply its mind before it dispenses with enquiry u/s 5A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry u/s 5A.

A repetition of the statutory phrase in the notification that the State Government is satisfied that the land specified in the notification is urgently needed and the provision contained in Section 5A shall not apply, though may initially raise a presumption in favour of the Government that prerequisite conditions for exercise of such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which the power has been exercised. Upon challenge being made to the use of power u/s 17, the Government must produce appropriate material before the Court that the opinion for dispensing with the enquiry u/s 5A has been formed by the Government after due application of mind on the material placed before it. It is true that power conferred upon the Government u/s 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.

As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency u/s 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 u/s 5A may not be held and objections of landowners/ persons interested may not be considered. In many cases, on general assumption likely delay in completion of enquiry u/s 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.

The special provision has been made in Section 17 to eliminate enquiry u/s 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 u/s 5A. We have already noticed a few decisions of this Court. There is a conflict of view in the two decisions of this Court viz. Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, and State of U.P. Vs. Smt. Pista Devi and Others, . In Om Prakash and Another Vs. State of U.P. and Others, this Court held that the decision in Pista Devi must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in Narayan Govind Gavate. We agree.

As regards the issue whether pre-notification and post-notification 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 fact situation 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 u/s 5A.

25. In Dev Sharan and Others Vs. State of U.P. and Others, the acquisition of land for construction of district jails was quashed on the ground that there was no valid ground or justification to exclude the application of Section 5A of the Act and it was observed:

...Admittedly, the Land Acquisition Act, a pre-constitutional legislation of colonial vintage is a drastic law, being expropriatory in nature as it confers on the State a power which affects person's property right. Even though right to property is no longer fundamental and was never a natural right, and is acquired on a concession by the State, it has to be accepted that without right to some property, other rights become illusory. This Court is considering these questions, especially, in the context of some recent trends in land acquisition. This Court is of the opinion that the concept of public purpose in land acquisition has to be viewed from an angle which is consistent with the concept of a welfare State.

The concept of 'public purpose' cannot remain static for all time to come. The concept, even though sought to be defined u/s 3(f) of the Act, is not capable of any precise definition. The said definition, having suffered several amendments, has assumed the character of an inclusive one.

It must be accepted that in construing 'public purpose', a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people, especially of the common people, defeats the very concept of public purpose. Even though the concept of public purpose was introduced by pre-constitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under fundamental rights and also the directive principles.

In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any pre-constitutional law cannot in any way take away or abridge rights conferred under Part III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly expanded. The meaning of 'public purpose' in acquisition of land must be judged on the touchstone of this expanded view of Part III rights. The open-ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of socioeconomic reality in this country.

Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power u/s 17 with the consequential dispensation of right of hearing u/s 5A of the said Act. The courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering the common man homeless and by exploring other avenues of acquisition, the court, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice.

26. In *Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others*, , this Court reviewed various judicial precedents and culled out 9 principles, of which Clauses (iii) to (ix) are reproduced below:

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-bound to scrutinise the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5A and 6 of the Act. A public purpose, however laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real

urgency, can the State invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Section 5A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry u/s 5A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

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

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

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

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

27. in the last mentioned case, this Court held that the State Government was not justified in invoking the urgency provisions for acquiring the land for planned industrial development of District Gautam Budh Nagar through Greater Noida Industrial Development Authority.

28. In *Devender Kumar Tyagi v. State of U.P* (2011) 9 SCC 164, the invoking of urgency provision in a case involving the acquisition of land for planned development of the Leather City Project was held to be impermissible.

29. A reading of Notification dated 6.7.2004 shows that the Lieutenant Governor of Delhi did not even advert to the issue of urgency and straightaway recorded his satisfaction that the provision contained in Section 17(1) of the Act is applicable to the land in question and declared that Section 5A shall not apply to the acquisition proceedings. In other words, the Lieutenant Governor did not, at all, apply his mind to the issue of urgency and mechanically sanctioned the invoking of Section 17(1) without realizing that the action of depriving the Appellant of its land was fraught with grave consequences and adversely impinges upon the constitutional protection envisaged under Article 300A, that no person shall be deprived of his property save by authority of law.

30. In conclusion, we hold that Respondent Nos. 1 and 2 were not at all justified in invoking Section 17(1) read with Section 17(4) and dispensing with the application of Section 5A for the acquisition of the Appellant's land. It is needless to say that development of Mehrauli Heritage Zone under planned development of Delhi was not so urgent that it could not wait for the few months time likely to be consumed in giving opportunity to the Appellant to file objections u/s 5A(1) and holding of inquiry u/s 5A(2).

31. Unfortunately, the High Court dismissed the writ petition without examining the main ground on which the Appellant had challenged the acquisition proceedings. Therefore, the impugned order is legally unsustainable.

32. In the result, the appeal is allowed, the impugned order is set aside and the acquisition of the Appellant's land is declared illegal and quashed. It is, however, made clear that this order will not preclude Respondent Nos. 1 and 2 from taking fresh action for the acquisition of the Appellant's land.