
(2010) 10 DEL CK 0141

In the Delhi High Court

Case No : Writ Petition (C) 1307 of 2010 and C.M. 2727 of 2010

Bijwasan Gram Vikas Samiti

APPELLANT

Vs

The L.G. Delhi and Others

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 17(A1), 3

Citation : (2010) 10 DEL CK 0141

Hon'ble Judges : Dipak Misra, C.J; Manmohan, J

Bench : Division Bench

Advocate : Medhanshu Tripathi, Harish Sharma and Vikram Tokas, for the Appellant; Sanjay Poddar, for R-1 and 4, Arjun Mahajan, for R-2/DDA, Shyel Trehan and Manjira Dasgupta for R-3/MCD, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—The present writ petition has been filed under Articles 226 and 227 of the Constitution of India seeking quashing of Notification No. F.9(10)/08/L & B/LA/14131 dated 4th February, 2010 issued by Joint Secretary (L & B), Land & Building Department, Government of NCT of Delhi for acquisition of land in village Bijwasan u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "Act") for construction of "Road Over Bridge".

2. The relevant facts of the present case are that the land measuring 12-03 bigha in Village Bijwasan has been acquired u/s 4 read with Section 17(1) of the Act for a public purpose, namely, "for construction of Road Over Bridge".

3. It is the respondents' case that the land in question is needed in larger public interest for an infrastructural project that has been undertaken by the MCD in order to decongest the traffic. The said project has been approved by the DDA in its technical committee meeting held on 1st February, 2007. The location of the project was examined by the MCD and a request was made to the Government of NCT of Delhi for acquisition of the said land. The MCD's request was examined

and the Lt. Governor of Delhi, being the Appropriate Authority, after being satisfied with the urgency involved in the matter issued a direction u/s 17(4) of the Act dispensing with the enquiry u/s 5A of the Act. The requisite notification dispensing with the provision of Section 5A of the Act, was issued on 4th February, 2010. There is no dispute that the acquisition is for a valid public purpose.

4. Mr. Medhanshu Tripathi, Learned Counsel for petitioner submitted that under the Act, an order or a notification cannot be issued under Sub-sections 1 or 4 of Section 17 of the Act with respect to a dwelling house or lal dora area. He submitted that though the definition of land u/s 3 of the Act includes things attached to the earth or "permanently fastened" to anything attached to the earth, yet the Supreme Court in Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, has held that an order under Sections 17(1) or 17(4) of the Act can only be passed with respect to waste or arable land and it cannot be passed with respect to land on which buildings stand. According to Mr. Tripathi, the aforesaid judgment has been followed in almost all cases pertaining to Section 17(4) of the Act.

5. Mr. Tripathi further contended that acquisition in the present case would lead to destruction of large number of houses and shops and displacement of large number of people. He also contended that prior to acquisition, sanction of Unified Traffic and Transportation and Engineering Centre should have been obtained.

6. Mr. Tripathi also submitted that the impugned notification suffers from non-application of mind as in the present case there was no urgency as contemplated by Sub-section 4 of Section 17 of the Act. In this connection, he pointed out that the proposal for constructing the road over bridge had been cleared by the technical committee of DDA in June, 2006.

7. Mr. Tripathi lastly submitted that the petitioner had proposed an alternative route for broadening the road, that is, on the agricultural land alongside the Phirni Road.

8. Mr. Sanjay Poddar, Learned Counsel for respondent Nos. 1 and 4 submitted that the urgency clause had been rightly invoked in the present case. He further submitted that both lal dora area as well as built up structure can be acquired under the Act.

9. Ms. Shyel Trehan, Learned Counsel for respondent-MCD referred in extenso to the feasibility report filed by her wherein it has been stated that the alternative route proposed by the petitioner is not feasible/viable. The grounds on which MCD did not find the petitioner's alternative proposal to be feasible is reproduced hereinbelow:

Acquisition of Agricultural Land: That the alternative route for the Road Over/ Under Bridge as suggested by the petitioner on the outer phirni road, involves large acquisition of land which are earmarked as agricultural land. That the map

clearly shows that the alternative route has agricultural land on its either side.

Ban on Covering of Storm Water Drain: That the alternative route also requires covering of storm water drain (Naala). It is pertinent to mention that vide circular dated 9.2.2010 issued by the O.S.D. to Hon"ble Lt. Governor covering of storm water drain has been banned on account of severe problems of water logging. Hereto annexed and marked as Annexure E is a copy of the circular dated 9.2.2010.

Alignment/Diversion Problem: That the alternative route has sharp bends and is zigzag making the construction of the Road Over/Under Bridge at the alternative route unfeasible. That the Road Over/Under Bridge at Najafgarh-Brijwasan Road is being constructed in continuance of an existing road. That the alternative route would entail diversion from the already existing road and requiring land from the Airport Authority of India for smoothening of the bends/zigzag alignment. Thus the technical viability of the alternative route in terms of geometrics is poor.

Requirement of more Land and Additional Costs for the alternative route: It is submitted that the proposed Road Over/Under Bridge is approximately 778 meters in length. That the alternative route as suggested by the Petitioner is approximately 2850 meters in length. Thus it is clear that the alternative route would require more land thereby making the whole construction/project more costly and time consuming.

Costs. That the construction is already under way and Work Order No. EE/Pr)Najafgarh/SYS/2009-10/85 dated 4.12.2009 has already been awarded to M/s. V.K. Sood for the construction of approaches of Road Over/Under Bridges for a contractual amount of Rs. 44.20 crores. That any kind of hindrances/changes in the construction at this point of time would cause heavy financial losses to the Respondent.

10. Having heard Learned Counsel for the parties and having perused the papers, we are of the opinion that the observation of the Supreme Court in *Nandeshwar Prasad and Anr.*(supra) about restriction of acquisition of built up structure is not applicable to the present case as the said judgment had been rendered in the context of Sub-section (1-A) of Section 17 with regard to acquisition proceedings in the State of Uttar Pradesh - which is not applicable to the acquisition proceedings in Delhi. In our opinion, the law is that under certain circumstances urgency clause u/s 17 of the Act can be invoked. In fact, in our view it depends upon peculiar facts and circumstances of each case and primarily on the nature of public project. In fact, the Supreme Court in its recent judgment in the case of *Nand Kishore Gupta and Ors. v. State of U.P. and Ors.* in Civil Appeal No. 7468/2010 decided on 8th September, 2010 while examining the acquisition of land under urgency clause for construction of "Yamuna Express" project has upheld the invocation of the urgency clause and held that the alignment of the road cannot be changed on account of built up structures. The Supreme Court has held that the individuals have to sacrifice their land for the

public good and the road so built would add to the betterment of the citizens. The relevant portion of the Supreme Court judgment in Nand Kishore Gupta and Ors. (supra) is reproduced hereinbelow:

22. The High Court has refuted all these contentions by giving good reasons. We will not go into these individual cases once the High Court has decided not to entertain these plea and, in our opinion, correctly. After all, this was an acquisition for building up a highway and the abovementioned Writ Petitions pertained to the land required for interchange. It is obvious that the alignment of the highway cannot be changed, as its design has been prepared after consideration of so many factors by the experts in building the road. Its direction or alignment, therefore, cannot be changed, with the result, the area which is required for interchange, also cannot be changed. This is a typical example of the individual having to sacrifice his land for the public good. There can be no dispute that this road would add to the betterment of the citizens of the East Yamuna area in particular and Uttar Pradesh in general. This is apart from the fact that the majority of the persons whose lands have been acquired, have either not objected to it or have accepted the compensation without any demur. It will, therefore, not be possible for us to go into these individual grievances, which have been rightly rejected by the High Court. In fact, in Balbir Singh's case, it was pointed out that out of the 12,315 affected farmers in 133 villages over the total area of 1,638 hectares of the Expressway, 11387 have already received compensation and only 142 farmers have raised the issues. The High Court has rightly held that the private interest is always affected to some extent in such large schemes requiring the acquisition of land. The High Court has rightly held that a holistic view had to be taken to look for an all round development without forgetting about our heritage, culture and traditions. We also, therefore, would not entertain the objections, feebly raised before us, individually.

xxxx

38. This takes us to the next point pertaining to the application of Sections 17(1) and 17(4) of the Act. The Learned Counsel for the appellants have vociferously urged that there was no necessity whatsoever to apply the urgency clause to these acquisitions and further to avoid the enquiry u/s 5A of the Act. According to the learned Counsel, this dispensation of Section 5A enquiry was not only unjust, but added to the sufferings of the appellants who had lost their fertile land. It was pointed out that this Project was slumbering since 2001 and it was in order to infuse fictitious urgency that a reference to the Commonwealth Games was made. According to the appellants, Right to be heard was akin to the Fundamental Rights and its breach has rendered the whole acquisition exercise illegal. Numbers of authorities were relied upon by the appellants. The respondents, on the other hand, argued that there was material available before the Government justifying the invocation of the urgency clause. The respondents argued that, in fact, the High Court has returned the finding that there was

material before the State Government for dispensing with the enquiry u/s 5A of the Act and that finding was based on the examination by the High Court of the records of the State Government. It was pointed out that going through the ordinary procedure for acquisition of land would have taken years for disposal of the objections while land was urgently required for public purpose, in this case, the construction of interchange under the Yamuna Expressway Project, which was absolutely essential for the purposes of running the highway. It was also pointed out by the respondents that because of the unnecessary litigation in the enquiries, the Project was hopelessly delayed and the cost had gone up from Rs. 1,700 crores to whopping Rs. 9,700 crores. It was also further pointed out that any waste of time would have invited the encroachments on the land, which would have added to the further trouble. The enormity of the Project which required acquisition of 1,604 hectares of land involving 12,283 farmers, would have taken years if the enquiry u/s 5A was permitted and thereby, the cost would have still further soared up. Numbers of authorities were relied upon by the parties.

39. Before considering the issue, we must take stock of the finding returned by the High Court. In the judgment in *Nand Kishore Gupta and Ors. v. State of U.P. and Ors.* Civil Misc. Writ Petition No. 31314 of 2009, the High Court took stock of the allegations regarding malafides and dispensing with the enquiry u/s 5A of the Act by referring to Paragraph Nos. 20, 21, 28, 29, 30, 31 and 32 of the Reply filed on behalf of the State Government through an affidavit of one Shri Vinod Kumar Singh, ADM, Land Acquisition, Agra, wherein it was pointed out that the Project was on the mammoth scale and there was a great deal of possibility of encroachments if the Project was allowed to linger. The High Court took note of the contention that YEIDA deposited 70% of the estimated compensation on 29.5.2009 itself, since 10% of the estimated compensation was already deposited by the acquiring body (YEIDA). The High Court then referred to the various clauses of the Concession Agreement like Clause Nos. 2.1, 2.2, 3.1, 3.2, 3.6 and 4.1 (a), (b), (c) & (d) to know about the exact nature of the job which was required to be done for building the Expressway. It was after this that the High Court had recorded a finding that the integrated Project was to cover a large area of land and the requirement was of 25 million square meters of land to be acquired. The High Court, therefore, noted the plea raised to the effect that the State Government took correct decision to invoke the urgency clause, as on an enquiry into disposal of individual objections as contemplated u/s 5A of the Act, the Project itself would have lost all value and efficacy. The High Court also noted the plea raised by YEIDA and the State Government about the likelihood of encroachment. The High Court then referred to the two decisions of this Court in *Sheikhar Hotels Gulmohar Enclave and Anr. v. State of Uttar Pradesh and Ors.* 2008 (14) SCC 716 and *First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another*, The High Court also referred to the counter affidavit of one Shri V.C. Srivastava, Addl. General Manager, Jaypee Infratech Ltd. (owned by Jaiprakash Industries Ltd.). The High Court then took stock of the

plea raised on behalf of the respondents on the basis of more than 25 judgments of this Court. The High Court then referred to the decision of this Court in *State of Punjab and Another Vs. Gurdial Singh and Others*, and *Om Prakash and Another Vs. State of U.P. and Others*, as also *Babu Ram and Another Vs. State of Haryana and Another*, The High Court also referred to the decision in *Manju Lata Agrawal v. State of U.P. and Ors.* 2007 (9) ADJ 447; *Sudhir Chandra Agrawal v. State of U.P.* 2008 (3) ADJ 289 and *Munshi Singh v. State of U.P.* 2009 (8) ADJ 360, which all were the decisions of the Allahabad High Court itself. The Court then referred to the delay on account of the litigations from 2001 till 2008 and referred to the contention raised on behalf of the appellants relying on the judgment in *Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another*, ; *Mahender Pal and Others Vs. State of Haryana and Others*, and *Babu Ram and Anr. v. State of Haryana and Anr.* (cited supra). It then recorded a finding in the following words:

In order to verify whether there was any material with the State Government to form an opinion and to exercise its powers u/s 17(1) and Section 17(4) of the Act, dispensing with enquiry u/s 5A of the Act, and that the State Government had applied its mind on such material, we summoned the records of the three concerned notifications. Shri Satish Chaturvedi, Addl. Advocate General assisted by Shri M.C. Tripathi, Addl. Chief Standing Counsel has produced the records alongwith the material collected by the Collectors/District Magistrate and placed before the State Government for forming an opinion. He has taken us through the various documents and forms on which the Collectors have recommended on Forms X alongwith justification of their recommendations as well as its summary given in the office note placed before the State Government. The three files produced before us relate to village Kuberpur, district Agra, village Malupur Pargana Atmadpur, district Agra and village Tappal district Aligarh for construction of interchange.

The notification u/s 4(1)/17 of the Act for proposing acquisition of land of village Kuberpur was made on 20.2.2009 and was published in two newspapers "Amar Ujala" and "Dainik Jagran" on 27.7.2009. The munadi was made on 7.3.2009. The notification u/s 6(1)/17 was issued on 15.6.2009 and was published in the two newspapers on 18.6.2009. The notice u/s 9 was sent on 20.6.2009 and possession was taken on 8.7.2009. In the recommendation sent by the District Magistrate, considered by the State Government on 11.2.2009 before publication of notification u/s 4, the District Magistrate had after giving details of land proposed to be acquired, had forwarded the Form-X alongwith justification referred to in para 3 of the noting of the State Government. The Collector, Agra recommended that in order to acquire the land for Y.E.I.D.A. established under the U.P. Industrial Area Development Act, 1976 the preparation of plan, identification of land for units for industrial development, infrastructural facilities, the lease or sale of the land, the construction of building and for industrial units. Y.E.I.D.A. has been given the regulating powers. The village Kuberpur is in the notified area of Y.E.I.D.A. and which urgently requires the proposed land for

construction of interchange" for Y.E.I.D.A. In case of any delay there is a strong possibility of encroachment on the land, which will affect the Project of Y.E.I.D.A. in public interest. In para 4 it was stated that hearing of oral and written objections will take several years causing indefinite delay in construction of interchange. The proposal was forwarded with recommendation signed by the Under Secretary, Industrial Development, Government of U.P., Special Secretary, Industrial Development; Shri Arun Kumar Sinha, Secretary, Rehabilitation and Industrial Development Department; Government of U.P.; Shri V.N. Garg, Principal Secretary, Rehabilitation and Development, Government of U.P. on 12.2.2009 and by Shri Shailesh Krishna, the Principal Secretary to Chief Minister on 18.2.2009.

As regard the acquisition of land for Y.E.I.D.A. for interchange in village Malupur for construction of Yamuna Expressway, Pargana Atmadpur, district Agra for acquisition of 4.5322 hec. of land the proposal with recommendation of District Magistrate, Agra on Form-X and the justification similar to and in the same language as in the case of village Kuberpur, district Agra was placed before the State Government alongwith the notings. The proposal bears recommendations and signature of Under Secretary, Industrial Development Department, Government of U.P. on 23.10.2008; Special Secretary, Industrial Development, Government of U.P. on 24.10.2008; Principal Secretary, Industrial Development and Commissioner on 30.11.200; Special Secretary, Industrial Development on 10.12.2008 and the Secretary to Chief Minister on 15.12.2008.

For village Tappal in Tehsil Khair, district Aligarh proposal for acquisition of 48.572 hec. of land for Y.E.I.D.A. for construction of Yamuna Expressway with the recommendation of the District Magistrate and justification for invoking urgency clause was placed before the State Government and was recommended and signed by the Under Secretary and Special Secretary, Industrial Development Department on 16.1.2009 ; Secretary, Rehabilitation and Industrial Development, Department of Government of U.P. on 16.1.2009 ; Principal Secretary, Industrial Development on 16.1.2009 and by the Secretary to the Chief Minister on the same day on 16.1.2009. The proposals were accepted by the State Government for acquisition and for invoking urgency clause for construction of Yamuna Expressway by Y.E.I.D.A.

Ultimately, the High Court wrote a finding in the following words:

The record produced before us by the State Government enclosing the material of invoking urgency clause and the satisfaction of the State Government on the said material, has satisfied us that the State Government had sufficient material and had applied its mind to record its opinion that there was urgency to acquire the land to dispense with the enquiry u/s 5A of the Act." We have deliberately quoted the above part of the High Court judgment only to show the meticulous care taken by the High Court in examining as to whether there was material before the State Government to dispense with the enquiry u/s 5A of the Act. We are completely convinced that there was necessity in this Project considering the

various reasons like enormousness of the Project, likelihood of the encroachments, number of appellants who would have required to be heard and the time taken for that purpose, and the fact that the Project had lingered already from 2001 till 2008. We do not see any reason why we should take a different view than what is taken by the High Court. The law on this subject was thoroughly discussed in Tika Ram and Others Vs. State of U.P. and Others etc. etc., to which one of us (V.S. Sirpurkar) was a party. In that decision also, we had reiterated that the satisfaction required on the part of Executive in dispensing with the enquiry u/s 5A is a matter subject to satisfaction and can be assailed only on the ground that there was no sufficient material to dispense with the enquiry or that the order suffered from malice. It was also found on facts in Tika Ram and Ors. etc. etc. v. State of U.P. and Ors. etc. etc. (cited supra) that there was no charge of malafide levelled against the exercise of power and there was material available in support of the satisfaction on the part of the Executive justifying the invocation of the provisions of Section 17. The position is no different in the present case. The High Court in the present matter went a step ahead and examined the bulky original record itself to find that there was full material available.

40. We are not impressed by the argument that the encroachment issue was not a relevant factor. This argument was based on the reported decision in Om Prakash and Anr. v. State of U.P. and Ors. (cited supra). It must be said that the actual scenario in that case was different. In that case, the Court was considering the acquisition of area of about 500 acres comprising of 437 plots, whereas, in the present case, the area to be acquired for the Expressway alone was more than 1,600 hectares. This is apart from the 25 million square meters of land which was liable to be acquired for the purposes of development of 5 land parcels. There was interlinking between the acquisition of land for the highway and the acquisition of land for establishing the 5 townships. In Om Prakash and Anr. v. State of U.P. and Ors. (cited supra), there was unexplained delay after issuance of Section 4 notification, which is not the case here. Therefore, we do not think that what has been said in Om Prakash and Anr. v. State of U.P. and Ors. (cited supra) would be apposite here. Every case has to be decided on its own facts. This is apart from the fact that it is not specifically laid down in Om Prakash and Anr. v. State of U.P. and Ors. (cited supra) that the encroachment was never a relevant factor for dispensing with the enquiry u/s 5A. Again we hasten to add that this was not the only factor considered by the State Government and even the High Court has not held the same to be the only factor for dispensing with the enquiry.

41. In view of the law laid down in the last judgment on this issue i.e. Tika Ram and Ors. etc. etc. v. State of U.P. and Ors. etc. etc. (cited supra), we are of the clear opinion that the challenge by the appellants on the ground that there was no urgency and, therefore, the enquiry u/s 5A of the Act should not have been dispensed with, cannot be accepted. We hold accordingly.

11. Similarly, the Supreme Court in the case of *Sheikhar Hotels Gulmohar Enclave v. State of U.P.* (2008) 14 SCC 716 has held that acquisition of land for decongestion of traffic is a public purpose. The relevant observations of the Supreme Court in the aforesaid case are as under:

8. There is no gainsaying in the fact that this right to file objection u/s 5A is a valuable right and the Governments are not given a free hand to dispense with Section 5A. Section 5A is only a safeguard against the arbitrary exercise of the power by the State. But one should also not lose sight of the fact that invocation of such a provision is also sometimes imperative as in order to meet the urgency of the situation it needs to be invoked in public interest. It depends upon cases to case. Sometimes it may not be necessary at all and the State functionaries may sometime out of over jealousy may invoke this provision which would seriously jeopardize the interest of the people. Therefore, it depends upon case to case where in a given situation Section 5A has been correctly invoked and the authorities were satisfied in an objective manner. In the present case, there is no two opinion that because of the globalization of economy Indian economy is progressing with fast speed, therefore in order to keep pace with the speed, invocation of Section 5A has become imperative.

9. Traffic congestion is a common experience of one and all and it is very difficult to negotiate with the traffic congestion in Delhi and National Capital region. Therefore, in the present situation, it cannot be said that the invocation of Section 5A was for ulterior purpose or was arbitrary exercise of the power. Since the Master Plan has already been prepared and it has been approved by the Planning Board and they have sanctioned a sum of Rs. 20.65 crores for the development of this Transport Nagar and widening of the National High No. 91 into four lanes. Therefore, the proposal was approved by the Board and it got the sanction from the National Capital Region Planning Board and ultimately the Government invoked the power u/s 17(4) read with Section 5A of the Act dispensing with the objections. In the light of these facts it cannot be said that invoking of power was in any way improper exercise. There is need for decongestion of the traffic and it is really the dire need of the hour and earliest it is implemented, better for the people at large. In this connection learned senior Counsel for the appellants invited our attention to the decision of this Court in *Union of India and Ors.* (supra) have held that Section 5A is not an empty formality but it is a substantive right which can be taken away only for good and valid reason and within the limitations prescribed u/s 17(4) of the Act. But in the present case the notification was struck down on the facts that no material was placed on record and secondly, it was also held that discontinuance of festival for want of land and any hindrance in using the land was not there. It was also pointed out that earlier an attempt was made to acquire the land for the very same purpose for holding such festival and it was allowed to lapse by efflux of time and consequently the Court found that there was no reference in the file to the need of invoking Section 17(4) and therefore, in a given situation. Their Lordships held that invocation of Section 17(4) of the Act was vitiated by non-

application of mind by the authorities. Therefore, this case was decided on the question of fact.

10. As against this, learned senior Counsel for the respondents submitted that traffic congestion has been recognized by this Court in *Union of India and Ors. v. Praveen Gupta and Ors.* (supra) as urgent need. In this case, land was acquired in order to shift the timber business from the walled city of Old Delhi as it had become the source of traffic congestion. Therefore, it was required to be urgently shifted from the existing place to relieve the congestion by acquiring the concerned land for the public purpose, namely, for establishment of timber depot. In that context, their Lordships held as follows: (*Praveen Gupta case*, SCC p. 81, para 8)

8. ...Since the acquisition is for shifting of timber business from the walled city to the outskirts of the city, shifting itself is for urgent purpose, viz., to relieve the traffic congestion in the walled city. Under those circumstances, the exercise of power u/s 17(4) cannot be said to be unwarranted in this case.

12. The submission that the land situated in Lal dora area cannot be acquired, has also been rejected by this Court in the case of *Rajesh Kumar Yadav Vs. Union of India (UOI) and Others*, The relevant observation of this Court in the said judgment is reproduced hereinbelow:

26. Finally, we shall consider the argument put forward on behalf of some of the Petitioners that it was the consistent policy that the land within 50 meters of the Lal Dora of village Abadi would not be acquired. It has been submitted that in some instances Denotification of farmhouses had been ordered. We find no merit in these arguments. We have already mentioned that there is no legal embargo against acquiring of lands and buildings that may be in the state of legal existence. Quite often this is exactly what happens where land is acquired for widening of roads. Normally, expropriation of such lands/buildings is eschewed for the very simple reason that the compensation payable is extremely high but this is a pragmatic practice only. Where a large parcel of land is acquired for the development of satellite colonies, it would not be advisable from the standpoint of aesthetic, town planning etc. to have pockets of property and land within the parcel of land existing in isolation. Uniformity in the Planned Development receives a severe setback in such cases. Moreover, Learned Counsel for the Respondents have correctly submitted that it is only the Petitioners ipse dixit that construction of farmhouses have been duly sanctioned since Title Deeds as well as Sanctioned Plans have not been filed. Be that as it may we find no substance in this argument even on merits.

13. It is pertinent to mention that the plea that built up structure cannot be acquired was rejected by this Court in *Roshanara Begum Vs. Union of India*, The said judgment was affirmed by the Supreme Court in the case of *Murari and Others Vs. Union of India (UOI) and Others*, . In any event, acquisition of any land normally leads to displacement of people and demolition of structures.

14. As far as petitioner's plea that there was no urgency to acquire the land in the present case is concerned, we find from the order sheets that the original file of the respondent was produced in this Court on 9th March, 2010 and the earlier Division Bench was satisfied about the urgency clause. The order dated 9th March, 2010 is reproduced hereinbelow:

Learned Counsel on behalf of Respondent Nos. 1 and 4 has shown us the original file. On a perusal thereof we find that there is a note of the Lt. Governor dated 27th January, 2010 expressing his satisfaction that land measuring 12 bighas 3 biswas is urgently required for construction of a road over bridge at village Bijwasan. It is recorded that in view of the urgency, the provisions of Section 5A of the Land Acquisition Act, 1894 shall not apply and a notification u/s 4 read with Section 17(1) and Section 6 be issued immediately.

The other submission made by the Petitioner is that there is an alternate route available to the Respondents for constructing the road over bridge.

Learned Counsel for Respondent Nos. 1 and 4 as well as the other Respondents may file their affidavits indicating the feasibility of adopting the alternate route.

Affidavits be filed within two weeks. Rejoinders, if any, thereto be filed within a week thereafter.

List on 23rd April, 2010.

15. From the aforesaid order, it is apparent that the urgency ground does not survive for consideration. In any event, keeping in view the purpose for which the land is being acquired, we are of the opinion that the urgency clause has been rightly invoked in the present case. We also do not find any statutory provision which mandates prior sanction of Unified Traffic and Transportation and Engineering Centre.

16. As far as the plea of alternative route is concerned, we are of the view that the MCD has given cogent reasons for rejection of the petitioner's proposal. Moreover, we are of the opinion that the petitioner cannot seek judicial review of the decision of the administrative authority under Article 226 of the Constitution of India on the basis of vague and general allegations. In fact, the Supreme Court in *Bajirao T. Kote (Dead) by Lrs. and Another Vs. State of Maharashtra and Others*, has held as under:

10. ...As mentioned earlier when the State Govt. have exercised the power u/s 4(1) for a public purpose and the public purpose was mentioned therein, the exercise of the power cannot be invalidated on grounds of malafides or colourable exercise of power so long as the public purpose is shown and the land is needed. or is likely to be needed and the purpose subsists at the time of exercise of the power. It is primarily for the State Government to decide whether there exists public purpose or not, and it is not for this Court or the High Courts to evaluate the evidence and come to its own conclusion whether or not there is public purpose unless it comes to the conclusion that it is a malafide or

colourable exercise of the power. In other words the exercise of the power serves no public purpose or it serves a private purpose.

17. Consequently, the present petition and pending application, being devoid of merit, are dismissed but with no order as to costs.