

(2010) 12 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 51 of 2007

Ganesh Ram and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35
Land Acquisition Act, 1894 — Section 11, 11A, 16, 17, 17(1)

Citation : (2011) 2 RLW 1310

Hon'ble Judges : Arun Mishra, C.J.;Prakash Tatia, J

Bench : Division Bench

Advocate : M.C. Bhoot, M.R. Singhvi, M.S. Singhvi, H.L. Kela, Narpat Singh, Manish Shishodia, Himanshu Maheshwari, D.K. Sharma, Girish Joshi, Akhilesh Rajpurohit and A.D. Charan, for the Appellant; R.L. Jangid, AAG, J.P. Joshi, D.S. Rajvi, Siddarth Joshi and J.P. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, C.J.—Heard learned counsel for the parties. These intra court appeals have been preferred assailing the validity of the acquisition made for the purpose of Vivek Vihar Scheme by the then Urban Improvement Trust, Jodhpur (referred to herein after as "UIT, Jodhpur") now taken over by Jodhpur Development Authority, Jodhpur (referred to herein after as "JDA, Jodhpur"). The State Government through its Urban Development Department issued a notification on 26.7.2000 u/s 4(1) of the Land Acquisition Act, 1894 (referred to herein after as the Act) and authorised the Land Acquisition Officer of UIT, Jodhpur to take necessary steps u/s 4(2) of the Act. This notification was followed by declaration issued by the State Government, Department of Urban Development. The provisions of Section 17(4) was invoked as mentioned in declaration u/s 6 of the Act, The Land Acquisition Officer of UIT, Jodhpur was authorised to take steps u/s 17(1) of the Act. Thereafter, the Land Acquisition Officer of UIT, Jodhpur issued notice u/s 9(1) of the Act on 17.4.2001. Pursuant thereto, a public notice (R/7 in SAW No. 51/07) was issued to take possession on

11.2.2003. Notice was affixed and beat of drum was also made. Thereafter, possession had been taken on 26.2.2003 vide receipt/panchnama (R/1) and it was handed over to UIT, Jodhpur on 8.8.2003 (R/6). Award was passed on 26.10.2004 determining the compensation recording a finding that possession had been taken on 26.2.2003.

2. It appears that only one of the writ applications i.e. CWP No. 1798/2001 had been filed before passing of the award. Other writ applications have been preferred after passing of the award.

3. In CWP No. 1798/2001, prayer has been made to quash the notification issued u/s 4 of the Act dated 26.7.2000 and the declaration u/s 6 of the Act dated 12.3.2001. Prayer has also been made not to disturb the possession of the petitioners over Survey No. 216 of Village Sangaria, Tehsil & District Jodhpur in area 3 bighas & 4 biswas. It is averred in the writ petition that the petitioners have purchased the land from Bhanwar Lal etc. by different registered sale deeds dated 17.1.1995. Their names have been mutated in the revenue record. In April, 2001, they came to know that the proceedings for acquisition of the land have been undertaken by the UIT. Substance of the notification issued u/s 4 dated 26.7.2000 has not been given publicity at convenient places as required. Enquiry u/s 5A of the Act has not been conducted as Section 17(4) of the Act has been invoked. The invocation of Section 17(4) was not warranted. Hence, the writ petition has been preferred and the same has been dismissed vide order dated 15.12.2006.

4. In other writ applications, which have been preferred after passing of the award, it has been submitted that pursuant to the notification issued u/s 4 of the Act dated 26.7.2000, requisite steps have not been taken by the Collector who was competent to do so. Though the declaration u/s 6 of the Act was issued by the State Government, however, steps have not been taken by the Collector u/s 9 of the Act, The action taken u/s 9 of the Act by the Land Acquisition Officer of the UIT, Jodhpur could not be said to be authorised. Possession was not taken on 26.2.2003. Mode of taking possession prescribed under Order 21 Rule 35 CPC has not been followed with respect to the structures which were existing over the land. It is also submitted that the enquiry u/s 5A of the Act has been illegally dispensed with by invoking provision of Section 17(4) of the Act.

5. The stand of the respondents no. 1, 2 and 3 in the return filed in CWP No. 1798/2001 is that the notice u/s 9(1) was issued to the individual khatedars also. Various persons including the petitioners filed their claim and award was ultimately passed on 26.10.2004. Possession had been taken on 26.2.2003. Provision of Section 11 of the Act is not attracted as Section 17(4) of the Act had been invoked. In the notification which was issued u/s 4 of the Act by the State Government, the Land Acquisition Officer of the UIT, Jodhpur was authorised to take further steps and in the declaration u/s 6 of the Act, the Land Acquisition Officer of the UIT, Jodhpur was authorised to take steps u/s 17(1) of the Act that is to take possession and to do other acts u/s 9 of the Act. After passing of the

award, the land has vested in the State. In the year 1995, the UIT, Jodhpur had put a proposal for acquiring 3095 bighas of private land situated at Villages Sangaria and Kudi Bhagtasani of Tehsil & District Jodhpur. The Urban Development & Housing Department of Government of Rajasthan granted approval for acquisition. Consequently, the notification u/s 4 of the Act was issued on 26.7.2000. It was published in 2 daily newspapers circulating in the area on 28.9.2000 and 29.9.2000 in Jalte Deep and Dainik Bhaskar respectively. After publication of the notification in the aforesaid manner, substance of the notification was affixed at the convenient places in the Villages Sangaria and Kudi Bhagtasani on 25.10.2000 as apparent from the report (R/5). While steps were under way for acquisition, the Division Bench of this Court in DB Civil Writ Petition No. 6073/1993 (Mahendra Lodha vs. State of Rajasthan & Ors.) issued directions on 20.12.2000 and 13.4.2001 : RLW 2001 (1) Raj. 463 directing the UIT, Jodhpur to provide facility of Transport Nagar so that the movement of heavy vehicles in the City of Jodhpur can be avoided. The Division Bench of this Court was apprised by the UIT, Jodhpur that Transport Automobile Nagar at Pali Road in Vivek Vihar has been proposed and the proceedings for acquisition have been initiated. In view of the said proposal, the Division Bench directed the acquisition to be completed in public interest on time bound basis as apparent from the order (R/G) dated 13.4.2001. The notice u/s 9(1) was published in the newspapers Dainik Bhaskar and Rajasthan Patrika on 17.4.2001 and 18.4.2001 respectively. The Land Acquisition Officer was competent to take possession on expiry of period of 15 days from the date of publication of notice u/s 9(1) of the Act. Possession had been taken over by the Land Acquisition Officer on 26.2.2003 in the presence of the patwaries. Fard Mauka was prepared and possession was handed over to UIT, Jodhpur on 8.8.2003 and mutation of UIT, Jodhpur was made. Draft award was passed on 11.3.2003 which was sent to the State Government for approval and ultimately, the award was approved by the State Government on 12.10.2004. Final award was passed on 26.10.2004. After passing of the award, the State Government has also granted approval for Vivek Vihar Scheme u/s 32 of the Rajasthan Urban Improvement Act, 1959. Master Plan was approved u/s 7 of the Act of 1959 on 18.8.2003. Since the petitioners have participated in acquisition and writ petitions have been filed belatedly, the same are liable to be dismissed.

6. The Single Bench while dismissing the CWP No. 1798/2001 has opined that due publicity was given to the notification issued u/s 4 of the Act in the locality. Due local publicity was also given to the declaration issued u/s 6 read with Section 17(4) of the Act. Enquiry u/s 5A of the Act has been rightly dispensed with. Opinion has been formed by the State to invoke the provisions of Section 17(4) of the Act in accordance with law and could not be said to be baseless. Award has been passed, hence, land stands vested in UIT, Jodhpur. Other writ petitions, which were preferred after passing of the award on 26.10.2004, have been dismissed on the ground that the Land Acquisition Officer of the UIT, Jodhpur was duly authorised to perform the functions of the Collector. In some of

the orders, reliance has been placed on a notification dated 22.5.1987 issued by the State of Rajasthan, Revenue Department by which the State Government has appointed all the Sub Divisional Officers cum Land Acquisition Officers to perform the functions of the Collector under the Act within their respective jurisdiction.

7. Aggrieved by the orders passed by the Single Bench of dismissal of the writ applications, these intra court appeals have been preferred.

8. Shri M.C. Bhoot and Shri M.S. Singhvi, learned counsel appearing on behalf of the petitioners, have submitted that due publicity in the locality was not given to the notification issued u/s 4 of the Act. Consequently, the acquisition is rendered illegal and void. The Land Acquisition Officer of the UIT, Jodhpur has made publicity in the local area. He was not having the power of the Collector to do so. Consequently, even if any local publicity has been made by him, is unauthorised. The Land Acquisition Officer of UIT, Jodhpur was not having the powers of the Collector to initiate the proceedings u/s 9 of the Act for taking the possession. Shri M.C. Bhoot has submitted that the possession in fact was not taken on 26.2.2003 whereas Shri M.S. Singhvi appearing in CWP No. 1798/2001 has submitted that inspite of there being interim stay granted by this Court on taking of possession, in violation of the order passed by this Court, possession had been illegally taken on 26.2.2003. However, the counsel have joined in submission that the enquiry u/s 5A of the Act has been illegally dispensed with by invoking provisions of Section 17(4) of the Act, the scheme was pending with effect from 1995. There was gap of more than 7 months in issuing the declaration u/s 6 of the Act and thereafter the possession has been taken, as per the stand of the respondents after about 1 year 11 months. No money was available with the UIT, Jodhpur at the time possession was taken for making payment of compensation which is necessary as per Section 17(3A) of the Act. The letter written to the State Government by the UIT, Jodhpur indicated that some other land was also appropriate for Transport Nagar, as such it was necessary to hold the enquiry u/s 5A of the Act.

9. Shri J.P. Joshi and Shri D.S. Rajvi, learned counsel appearing on behalf of UIT, Jodhpur and Shri R.L. Jangid, AAG, appearing on behalf of the State have supported the acquisition. They have submitted that all the writ applications are liable to be dismissed on threshold as award has been passed. Except one writ application i.e. CWP No. 1798/2001 which was filed in 2001, all the writ applications have been filed after 26.10.2004 on which date final award was passed. The petitioners have participated in the proceedings for obtaining the compensation. The land stands absolutely vested in UIT, Jodhpur (JDA, Jodhpur). Due to delay, this Court need not go in the merits of the various submissions. Even the petitioners in CWP No. 1798/2001 have acquiesced in passing of the award. The writ petition filed by them to assail the notification and local publicity given to the notification issued u/s 4 of the Act was clearly belated. Enquiry u/s 5A of the Act has been rightly dispensed with considering the time bound frame given by this Court to make acquisition for Transport Nagar on or before

31.3.2001 as apparent from the order dated 20.12.2000 passed in CWP No. 6073/1993. The Land Acquisition Officer had been specifically authorised in the notification issued u/s 4 of the Act to take steps u/s 4(2) of the Act and to do all other ancillary acts and in the declaration u/s 6 of the Act, the Land Acquisition Officer had been specifically authorised to do all the acts of the Collector u/s 17(1) which provision has reference to Section 9 of the Act also. Due local publicity was given to the notification issued u/s 4 of the Act. Possession had been taken over on 26.2.2003. Drawing of panchnama is the mode of taking possession. Provision of Section 9 of the Act has been duly complied with 15 days notice was given before taking the possession. No illegality has been committed. The intra court appeals are merit-less, hence, deserve dismissal.

10. Firstly in our considered opinion, the writ applications, which have been filed after passing of the final award on 26.10.2004, suffer with laches. As apparent from the facts that the notification u/s 4 of the Act was issued on 26.7.2000, the declaration u/s 6 of the Act was issued on 12.3.2001, notice u/s 9(1) of the Act was issued on 17.4.2001, possession is said to be taken on 26.2.2003 and the petitioners have participated in the proceedings of determination of compensation, therefore, the writ applications filed after passing of the award cannot be said to be maintainable on the ground of delay alone. Besides after passing of the award, the land stands absolutely vested in the UIT, Jodhpur and the writ petitions filed thereafter are liable to be dismissed on this ground.

11. Coming to the submission that whether the local publicity was given to the notification issued u/s 4(1) of the Act? It is apparent from the bottom note mentioned in the notification dated 26.7.2000 published in the gazette on 29.7.2000 that one copy of the notification was pasted at Village Sangaria and another at Village Kuri Bhagtasani. The said note is dated 25.10.2000 and is signed by Shri D.S. Kaviraj and Shri Mahesh Ujjwal, Advocates. There is absolutely nothing to doubt the correctness of the aforesaid endorsement. Merely by the fact that it has been signed by two advocates who were residing at a distance of some what 10-15 kms., we cannot doubt their presence and the factum of affixation in the aforesaid villages.

12. Thus, we find no merit in the submission that due publicity of the said notification in the locality was not given. It is not in dispute that the notification u/s 4 of the Act was duly published in the Gazette and 2 daily newspapers in circulation in the area.

13. Coming to the question whether the enquiry u/s 5A of the Act has been rightly dispensed with in the instant case by invoking Section 17(4) of the Act? While issuing the declaration u/s 6 of the Act on 12.3.2001, the said provision had been invoked. In the backdrop of the fact that CWP No. 6073/1993 was pending in this Court and this Court had directed vide order dated 20.12.2000 the U.I.T., Jodhpur to develop and complete the proposed Automobile Nagar by 31st March, 2001.

14. It is apparent that in the light of the aforesaid direction, the communication dated 15.1.2001 (R/2) was written referring to the direction of this Court in the order dated 20.12.2000. It was mentioned that in the proposed Vivek Vihar Scheme at Villages Kuri Bhagtasani and Sangaria on the land which is being acquired, Transport Nagar and Automobile Nagar are to be developed. It was necessary to comply with the direction on time bound basis to invoke Section 17(4) of the Act and to dispense with the enquiry u/s 5A of the Act so that the possession of the land could be obtained. The letter to the aforesaid effect was written by the Collector cum Chairman of the UIT, Jodhpur to the Secretary of the Urban Development Department, Government of Rajasthan. Some other facts were also mentioned in the communication indicating the urgency. Consequently, the State has acted upon the aforesaid direction of this Court and has dispensed with the enquiry u/s 5A while invoking the provision u/s 17(4) at the time of issuing the declaration u/s 6 of the Act. Considering the facts projected in the order passed by this Court that there was dire need to have Transport Nagar as due to huge traffic of heavy vehicles, it was not possible to safely go out in the town. In our opinion, there was urgency and the provisions of Section 17(4) of the Act had been rightly invoked in the instant case. This Court has observed in order dated 20.12.2000 passed in CWP No. 6073/1993 as under:

21. Having heard the different parties affected and on careful consideration of the entire material on record the modify our order dated 21.11.2000 and further direct as follows:

(i) The heavy vehicles shall be permitted within the City during the night time i.e. 10 P.M. to 7 A.M. Only for the purpose of loading and unloading of the goods at shops or other establishment but not at shop or godown of transport companies, which are required to be shifted to Transport Nagar. However, the heavy vehicle shall be allowed to park inside the city even during the night hours. They will move outside the City just after loading or unloading. During the night time, the trucks will be driven with a slow speed not beyond 40 kms. per hour and horn shall not be blown. This arrangement is for a temporary period i.e. upto 31.01.2001 in case of misuse of liberty given, the temporary arrangement made, shall be discontinued ;

(ii) The U.I.T., Jodhpur is directed to develop all the Truck Terminus (Transport Nagars) as indicated in their affidavits latest by 31st March, 2001 ;

(iii) The U.I.T., Jodhpur is directed to develop the parking zones as indicated in the affidavits filed by the Secretary, UIT, Jodhpur latest by 30th January, 2001. The parking spots proposed by the All India Tourist Permit Holders shall be quickly examined and if found suitable. The same shall be developed by 31st January, 2001 ;

(iv) The heavy vehicles carrying stones from the quarries working in Fidusar, Kali Beri, Sondon Ki Dhani, Balsamand, Brahmno Ka Tanka etc. moving towards

Banner and Pali, shall be permitted to ply on the route viz., Fidusar Chopar - Radiya Fatak, Soorsagar by pass, Kaylana Choraya Royalty Naka, Dauji Ki Dhani, Pal Link Road - Barmer Road - Industrial Area Road.

(v) The U.I.T., Jodhpur is directed to develop and complete the proposed Automobile Nagar by 31st March, 2001.

(vi) The District Supply Officer, Jodhpur is directed to check adulteration in petrol and diesel and initiate proceedings against persons indulging in nefarious activities of adulteration. The Petroleum companies should provide necessary "kit" for checking adulteration to the District Supply Officer as & when it is demanded. It is expected of the Petroleum Companies to ensure that none of their dealers indulges in the adulteration of petrol or diesel. Inaction on the part of any of the officers of the State Government or the Petroleum Companies shall be viewed seriously by this Court. The D.S.O. will submit a compliance report in this regard or before 5th January, 2001.

(vii) To meet the grievance of Suryanagri Automobile Sangh, the heavy vehicles shall be permitted to pass through Akhaliya Choraya, Bombay Motor Choraya, 12th Road Circle, Turn towards Shastrinagar Police Station. This arrangement shall continue upto 31st March, 2001.

15. It was submitted on behalf of the petitioners by Shri M.C. Bhoot and Shri M.S. Singhvi that in fact, there was no urgency. Under the guise of order passed by this Court, sense of urgency was shown. It was mentioned by the Collector in the letter dated 15.1.2001 that the possession was required to be taken before 31.3.2001. Nothing was done to take possession by that date. In fact, possession was taken after two years. They have relied upon the decision of the Hon'ble Apex Court in Mahender Pal and Others Vs. State of Haryana and Others, , in which it has been laid down that right to file an objection and hearing could have been taken away if the conditions precedent for exercise of this emergency power u/s 17 are satisfied. The subjective satisfaction must be based on objective criteria. Ipse dixit on the part of the State would not serve the purpose. No doubt road construction is one of the purposes mentioned in Sub-section (2) of Section 17 of the Act in respect whereof Sub-section (4) would apply but the same would not mean that for the purpose of road construction irrespective of the nature of cases and/or irrespective of the nature of the road to be constructed, Sub-section (4) of Section 17 of the Act could be invoked. The case was remitted back to the High Court for consideration of the matter afresh. Section 17(4) is an exception to Section 5A. The provision deserves strict construction and scrupulous compliance.

16. Reliance has also been placed upon the decision of the Hon'ble Apex Court in Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, , in which earlier the notification issued u/s 4 and declaration u/s 6 of the Act were lapsed. The land was released and after 20 years of the first notification, fresh notification u/s 4(1) of the Act had been issued invoking the urgency clause

dispensing with the enquiry u/s 5A. In the aforesaid backdrop of the fact, the Hon''ble Apex Court laid down that right of raising objection u/s 5A was taken away in arbitrary manner.

17. Reliance has also been placed upon the decision of the Hon''ble Apex Court in *Om Prakash and Another Vs. State of U.P. and Others*, , in which the enquiry was dispensed with invoking urgency clause. The State Government took more than 9 months in issuing declaration u/s 6 of the Act. On the above facts of the case, it was found that dispensing with enquiry u/s 5A of the Act was bad in law.

18. Reliance has also been placed upon the decision of the Hon''ble Apex Court in *Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others*, , in which it has been laid down in the backdrop of the facts that there was gross delay or lapse on the part of the acquiring authorities. Properties remained with Delhi Administration for more than 10 years. The Land Acquisition Authorities did not take any action for acquiring the properties for a period of two years and thereafter without any material to show subjective satisfaction, invoked urgency clause u/s 17 and issued notification acquiring properties. The action was held to be illegal.

19. Reliance has also been placed upon the decision of the Hon''ble Apex Court in *Union of India (UOI) and Others Vs. Mukesh Hans etc.*, , in which it has been laid down that while dispensing with the enquiry, there is need of application of mind by appropriate Government which is inherent while exercising power u/s 17(1) of the Act. The relevant fact should be there before the authority before the decision had been taken. Right of hearing is a very valuable right of a person whose property is sought to be acquired and decision to dispense with this minimal right must be based on material on record to support the same and bearing in mind the object u/s 5A.

20. There is no dispute with the aforesaid propositions laid down by the Hon''ble Apex Court in the decisions relied upon by counsel appearing on behalf of the appellants. The question is whether considering the urgency of the directions issued by this Court considering the traffic situation, hazard to safety of public at large caused due to heavy vehicular traffic in the city, the Collector cum Chairman of UIT, Jodhpur (JDA, Jodhpur) was justified in writing the letter dated 15.1.2001 on the strength of the directions issued on 20.12.2000 by this Court particularly in para no. 21 of the order quoted above.

21. In our considered opinion, there was enough material before the State to form an opinion as to urgency. In fact, there was urgency. Subsequent remiss on the part of the officials after having invoked the urgency clause, cannot come in the way of invocation of urgency which is with an object. The authorities were supposed to take further action on time bound basis in the spirit of the order passed by this Court. Their failure to do so is not enough to wipe off the emergency which in fact existed and projected in the order passed by this Court.

22. In *Jai Narain and Others Vs. Union of India and Others*, , the Hon''ble Apex

Court has considered the urgency vis-a-vis to the order passed by the Court and observed that when the notifications have been issued under the directions of the Hon''ble Apex Court, the Court has indicated urgency in taking possession of the land under acquisition, obviously the land was required urgently. This observation has been made in the context of Section 4 read with Section 17(4) and Section 6 of the Act. The Hon''ble Apex Court has laid down in para 10:

Various orders and directions issued by this Court from time to time in Mehta case clearly show that the land in dispute - for Keshavpur STP - is being acquired under the directions of this Court. Even the impugned notifications u/s 4 read with 17 and Section 6 of the Act have been issued under the directions of this Court. This Court repeatedly indicated in the orders-directions that there was urgency in taking over the possession of the land, under acquisition, for the construction of STP at Keshopur. The authorities were directed to take the work of land acquisition and construction of STP's on war-footing. "Likely" in the background of this Court's orders passed from time to time for a time bound programme for setting up the STPs means, for purposes of this case, "certainly" and "urgently".

23. The Hon''ble Apex Court further laid down that the project is of great public importance. It is indeed of national importance and took judicial notice of the fact that there was utmost urgency to acquire the land in dispute and as such the emergency provisions of the Act were rightly invoked.

24. In Union of India (UOI) and Others Vs. S.H. Ganshyam Dass Kedia and Others, , relied upon by Shri J.P. Joshi, it was observed by the Hon''ble Apex Court that the exercise of urgency for planned development of Delhi could not be said to be illegal on the ground that it would take long time for development. If the record discloses consideration of the Government on the matter of urgency, the High Court cannot sit in appeal over subjective satisfaction of the Government. Thus, merely by the fact that the respondent authorities in the instant case have taken long time, this Court cannot sit in appeal and strike down the invocation of urgency clause.

25. In Union of India and others Vs. Praveen Gupta and others, , it has been laid down by the Hon''ble Apex Court that the very object of enquiry u/s 5A is whether the land proposed to be acquired is needed or is likely to be needed for the public purpose mentioned in the notification or other land may be more suitable for the purpose. The acquisition is for shifting of timber business from the walled city to the outskirts of the city for the purpose of relieving the traffic congestion in the walled city. The Hon''ble Apex Court held that the invocation of urgency provision dispensing with the enquiry u/s 5A of the Act was warranted. Delay in issuing and publication of declaration u/s 6 of the Act was of no consequence. It has also been observed that the decision of urgency is an administrative decision and is a matter of subjective satisfaction of appropriate Government on the basis of material available on the record. Therefore, there was no need to pass any reasoned order to reach the conclusion that there is

urgency so as to dispense with the enquiry u/s 5A in exercise of power u/s 17(4) of the Act. The Hon"ble Apex Court laid down in paras 7, 8 and 9:

7. Shri Sanghi, learned Senior Counsel has pointed out that there is no real urgency in this matter and the respondents could have been given an opportunity to contend that land is not needed for any public purpose. In support thereof, he placed strong reliance on the judgments in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, ; *State of Punjab and Another Vs. Gurdial Singh and Others*, . The decision in *Narayan Govind's* case, has been distinguished by this Court in several cases. In the light of the ratio in catena of decisions, this Court has consistently held that acquisition of the property for the planned development of the housing accommodation is an urgent for acquisition and, therefore, dispensing with the enquiry u/s 5A, exercising power u/s 17(4) has been held to be valid. It is true that in *Dora Phalavi* and *Gurdial Singh's* cases the two Judge Bench of this Court in each of the cases held that enquiry u/s 5A may not be dispensed with in a cavalier manner denying the opportunity to file the objections, unless real urgency is shown. Each case has to be considered on its own facts. The very object of enquiry u/s 5A is whether the land proposed to be acquired is needed or is likely to be needed for the public purpose mentioned in the notification and whether any other suitable land other than the acquired land is needed for the said public purpose. In this case, the entire land in two villages was acquired. It is seen that timber business is being carried on in the walled city of old Delhi. It has become a source of traffic congestion and that it requires to be shifted urgently from the existing place to relieve the congestion by acquiring the concerned land for the public purpose namely, establishment of timber depots. It is true that a mention was also made that unauthorised construction has been made in the area proposed to be acquired. If the enquiry was conducted, delay would defeat the very public purpose of acquisition for shifting of timber business from the walled city and establishment of the timber depots outside the walled city. Therefore, the urgency mentioned in exercising the power u/s 4(1) was justified. Shri Goswami, learned senior counsel for the Union of India, has relied upon the judgment of this Court in *Jai Narain and Others Vs. Union of India and Others*, . It is true, as pointed out by Shri Sanghi, that the acquisition in this reported decision was made for the establishment of sewerage plan as per the direction of this and, therefore, there was urgency.

8. But, as stated earlier, 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 the power u/s 17(4) cannot be said to be unwarranted in this case. It is true that there was a delay, from the date of the notification u/s 4(1) of the Act in publication of the declaration u/s 6. When it was pointed out that no counter-affidavit was filed in the High Court explaining the delay, we directed the learned counsel for the State to produce the record. An averment has been made in the SLP that the delay was due to enquiry being conducted into the objections filed before Lt. Governor in this behalf and until the

objections were over-ruled, declaration u/s 6 could not be published. The note in the office file and the running file do indicate that certain persons kept on making representations right from 1983 and as far as present notification is concerned, objections had been received on 25-4-1990 and, thereafter, they have been considered after the Lt. Governor directed to enquire into the matter and submit the report. Consequently, they conducted the enquiry and submitted the report.

9. It is now settled legal position that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. Therefore, there was no need to pass any reasoned order to reach the conclusion that there is urgency so as to dispense with the enquiry u/s 5A in exercise of power u/s 17(4). It is then contended by Shri Sanghi that as per the revised Master Plan, only 37 hectares of land was needed for establishment of timber depots, though extensive land was sought to be acquired. When that objection was taken, we passed the order directing the competent officer to file an affidavit By our proceedings dated August 24, 1995, it was observed as under:

In view of the specific averments made in the written submissions of the respondents regarding the location of the timber depots in terms of the master plan, it requires clarification by the Delhi Administration whether the lands in Siraspur & Libaspur are still required for the purpose mentioned in the notification, namely, planned development of Delhi and shifting of the timber depots from the Teliwara area into the new places

26. In First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, , it has been laid down by the Hon"ble Apex Court that the case of urgency of an acquisition is a matter of subjective satisfaction of the appropriate Government. When there is challenge on the ground of non-application of mind and malafides, the burden lies on the person alleging malafides on the basis of certain specific materials. So long the purpose of acquisition and urgency continue to exists, the exercise of power u/s 17(4) of the Act cannot be held to be malafide. Mere delay on the part of the Government dispensing with an enquiry u/s 5A by invoking powers u/s 17(1) of the Act would not invalidate the decision itself. Merely because the land in question was already in possession of the medical college for which it was sought to be acquired, the exercise u/s 17 would not be vitiated. The Hon"ble Apex Court has laid down thus,

5. The question of urgency of an acquisition u/s 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 u/s 17(1) and (4) of the Act, and issues Notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority

had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the concerned authorities. If an order invoking power u/s 17(4) is assailed, the Courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind. Any post Notification delay subsequent to the decision of the State Government dispensing with an enquiry u/s 5A by invoking powers u/s 17(1) of the Act would not invalidate the decision itself specially when no mala fides on the part of the government or its officers are alleged. Opinion of the State Government can be challenged in a Court of law if it could be shown that the State Government never applied its mind to the matter or that action of the State Government is mala fide. Though the satisfaction u/s 17(4) is a subjective one and is not open to challenge before a Court of law, except for the grounds already indicated, but the said satisfaction must be of the Appropriate Government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Government that there was urgency even though cannot be conclusive but is entitled to great weight, as has been held by this Court in Jage Ram and Others Vs. State of Haryana and Others, . Even a mere allegation that power was exercised mala fide would not be enough and in support of such allegation specific materials should be placed before the Court. The burden of establishing mala fides is very heavy on the person who alleges it. Bearing in mind the aforesaid principles, if the circumstances of the case in hand are examined it would appear that the premises in question was required for the students of National Medical College, Calcutta and the Notification issued in December 1982 had been quashed by the Court and the subsequent Notification issued on 25.2.1994 also had been quashed by the Court. It is only thereafter the Notification was issued u/s 4(1) and 17(4) of the Act on 29.11.1994 which came up for consideration before the High Court. Apart from the fact that there had already been considerable delay in acquiring the premises in question on account of the intervention by Courts, the premises was badly needed for the occupation of the students of National Medical College, Calcutta. Thus, existence of urgency was writ large on the facts of the case and therefore, said exercise of power in the case in hand, cannot be interfered with by a Court of law on a conclusion that there did not exist any emergency. The conclusion of the Division Bench of Calcutta High Court, therefore, is unsustainable.

27. Testing on the anvil of the aforesaid decision, it is apparent that there was application of mind and the decision could not be said to be malafide and mere delay on the part of Government subsequent to its decision to dispense with the enquiry would not invalidate the decision itself.

28. In view of aforesaid discussion, we find no force in the submission of Shri Bhoot that action was not bonafide and just to do the lip service to the Court's order, the urgency provision had been invoked to the detriment of the holders of the land. As already mentioned above, at the sake of repetition, we are

constrained to observe that the purpose of Transport Nagar considering the traffic hazard was in fact urgent purpose to relieve the traffic congestion in the city of Jodhpur. The material was available on record to invoke the urgency clause. Thus, it could not be said that the decision was not taken bonafide. When real urgency existed, in our opinion, invocation was in accordance with the spirit of Section 17(4). We cannot sit in appeal when the material was available to invoke the provisions in the form of order of this Court and letter of the Collector.

29. We have no hesitation in rejecting the submission that the enquiry u/s 5A has been illegally dispensed with in this case. We hold that provision of Section 17(4) had been rightly invoked.

30. Coming to the submission raised by Shri Bhoot as to incompetence of Land Acquisition Officer of UIT, Jodhpur in the writ applications which have been filed subsequent to the passing of the award, as already held, the writ applications are liable to be dismissed only on the ground of laches. However, we examine the submission of Shri Bhoot on merits that the Land Acquisition Officer of UIT, Jodhpur was not competent to take action u/s 4(2) or u/s 9 of the Act and that reliance has been wrongly placed upon by the Single Bench on the notification dated 2.5.1987. The counsel has precisely submitted this relying upon Section 3(c) of the Act that either the Collector, Deputy Commissioner or any officer specially appointed by the State Government to perform the function of the Collector under the Act, could have taken the aforesaid steps.

31. While examining the aforesaid submission on merits, we find that while issuing notification u/s 4 of the Act, power had been given to Land Acquisition Officer of UIT, Jodhpur to take steps u/s 4(2) of the Act. Similarly, while issuing declaration u/s 6 read with Section 17(4) of the Act, the Land Acquisition Officer of UIT, Jodhpur had been authorised to take steps under Sections 17(1) of the Act. Section 3(c) and Section 17(1) of the Act are quoted below:-

3(c) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act;

17(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

32. It is apparent from the definition of Collector u/s 3(c) read with Section 17(1) of the Act that it is open to the appropriate Government by notification to authorise any officer to perform the functions of a Collector under the Act. When the Land Acquisition Officer of UIT, Jodhpur had been specifically authorised in the aforesaid notification u/s 4 and declaration u/s 6, he could have taken the steps which the Collector is required to take pursuant to such notification/declaration u/s 17(1). The Land Acquisition Officer of UIT, Jodhpur was clearly

authorised u/s 9 of the Act to take possession of any land needed for public purpose and to take other steps under the Act pursuant to the notification u/s 4 of the Act and declaration u/s 6 of the Act, Thus, the action taken by the Land Acquisition Officer of UIT, Jodhpur could not be said to be unauthorised or illegal in any manner.

33. In view of aforesaid authorization given to Land Acquisition Officer of UIT, Jodhpur, it is not necessary to fall back upon the notification dated 22.5.1987, the notification dated 22.5.1987 provides that in exercise of the powers conferred by Section 3(c) of the Act, the State Government has appointed all S.D.Os. cum L.A.Os. to perform the functions of the Collector under the said Act within their respective jurisdiction. No doubt about it that the Land Acquisition Officer of UIT, Jodhpur was not holding post of Sub Divisional Officer at the same time as necessary under the aforesaid notification but he was otherwise specifically authorised under the notification u/s 4 of the Act and declaration u/s 6 of the Act to take necessary steps and take possession. Thus, he had jurisdiction to initiate the proceedings u/s 9 also by issuing notice for taking possession.

34. Shri Bhoot has relied upon the decision of Division Bench rendered in Lalita Ben vs. State of Rajasthan & Ors. 2001 (2) RRT 1096 in which the order of land acquisition challenged in the earlier writ petition was upheld, in the backdrop of the fact that the earlier writ petition challenging the acquisition has turned against the petitioner upto the Hon''ble Apex Court, the proceedings under Sections 4 and 6 were upheld by the Single Bench. By filing of subsequent writ petition, the petitioner has challenged the proceedings taken by Sub Divisional Officer, Abu as Land Acquisition Officer. The Sub Divisional Officer, Abu was replaced by notification dated 28.5.1979 and the Sub-Divisional Officer, Sirohi was appointed as Land Acquisition Officer. The award was not passed by the appointed officer. The proceedings were not completed within two years after publication of declaration u/s 6 of the Act. Hence, the Division Bench of this Court opined that the acquisition proceedings were liable to be quashed. In the instant case, the facts are totally different. It is not the case where the Land Acquisition Officer of UIT, Jodhpur was unauthorised to take steps as found by us. The grounds in Lalita Ben's case was that the proceedings were not completed within two years, the award was passed by the unauthorised officer. Thus, the decision has no application in the facts of the instant case.

35. In our opinion, Land Acquisition Officer of UIT, Jodhpur was authorised to take steps. This question we have examined on merits, though in our opinion, the writ applications in which this question has been raised cannot be said to be tenable in view of the delay and laches and the fact that these were filed after passing of the award.

36. Coming to the next question whether the possession was in fact taken on 26.2.2003 or not? We find contradictory submissions raised at the bar on behalf of the petitioners. The submission of Shri Bhoot learned counsel appearing on

behalf of the petitioners, whose writ applications are liable to be dismissed on the ground of laches, that the possession in fact has not been taken on 26.2.2003 whereas submission of learned counsel Shri M.S. Singhvi appearing in CWP No. 1798/2001 is that there was interim order granted by this Court on 11.5.2001 which was confirmed on 3.5.2002, thereafter it was not open to take possession on 26.2.2003 and possession had been taken in violation of the order passed by this Court. Shri Bhoot has also elaborated his submission by making reference to Order 21 Rule 35 CPC and pointed out that there were certain structures, boundary wall and pipelines of which possession could not have been taken by simply drawing a panchnama.

37. Before we advert to the facts of the instant case, we deem it proper to note certain decisions as to mode of taking possession. In National Thermal Power Corporation Ltd. Vs. Mahesh Dutta and Others, , it has been laid down by the Hon''ble Apex Court that no absolute rule with respect to the actual physical possession can be laid down that a necessary condition of vesting of the land in the Government is taking actual physical possession of the land. The question as to whether actual physical possession had been taken in compliance of the provisions of Section 17 of the Act or not would depend upon the facts and circumstances of each case. Delivery of possession in respect of immovable property should be taken in the manner laid down in Order 21 Rule 35 CPC, on a question whether possession of the acquired land had actually been taken over or not being a disputed question of fact could not have been gone into by the High Court. It is not a case where oral evidence was required to be taken.

38. Learned counsel Shri Joshi has relied upon the decision rendered in Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs., , wherein it has been observed by the Hon''ble Apex Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the Land Acquisition Officer. The Hon''ble Apex Court has observed thus,:

9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses winged by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land.

39. In Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, , the Hon''ble Apex Court has laid down that in the cases of land acquisition, it is now well settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchnama in the presence of Panchas and taking possession and giving delivery to the beneficiaries. The retention of possession thereafter would be illegal or unlawful possession. The Hon''ble Apex Court has observed thus,:

4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchnama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.

40. In *Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others*, , the Hon''ble Apex Court has laid down that when a public notice is published at a convenient place or near the land to be taken stating that the Government intends to take possession of the land, then ordinarily and generally there should be no question of resisting or impeding the taking of possession. The delivery or giving of possession by the owner or the occupant of the land is not required. The Hon''ble Apex Court has laid down that the presence of the owner or the occupant of the land to effectuate the taking of possession is not necessary. No further notice beyond Section 9(1) of the act is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government. The Hon''ble Apex Court has observed thus,:

25. When a public notice is published at a convenient place or near the land to be taken stating that the Government intends to take possession of the land, then ordinarily and generally there should be no question of resisting or impeding the taking of possession. Delivery or giving of possession by the owner or the occupant of the land is not required. The Collector can enforce the surrender of the land to himself u/s 47 of the Act if impeded in taking possession. On publication of the notice u/s 9(1) claims to compensation for all interests in the land has to be made ; be it the interest of the owner or of a person entitled to the occupation of the land. On the taking of possession of the land u/s 16 or 17(1) it vests absolutely in the Government free from all incumbrances. It is, therefore, clear that taking of possession within the meaning of section 16 or 17(1) means taking of possession on the spot. It is neither a possession on paper nor a "symbolical" possession as generally understood in Civil Law. But the question is what is the mode of taking possession? The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking, of possession is not necessary. No further notice beyond that u/s 9(1) of the act: is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession has been

taken the land vests in the Government.

41. In *Sita Ram Bhandar Society, New Delhi Vs. Lt. Governor, Govt. of N.C.T. Delhi and Others*, , the Hon"ble Apex Court has laid down what is to be the mode of taking possession in the cases of land acquisition. Relying upon the decisions of *Balwant Narayan Bhagde (supra)*, *T.N. Housing Board (supra)* and *Balmokand Khatri Educational and Industrial Trust (supra)*, the Hon"ble Apex Court has laid down thus,:

30. It would, thus, be seen from a cumulative reading of the aforesaid judgments, that while taking possession of a large area of land with a large number of owners, it would be impossible for the Collector or the Revenue Official to enter each bigha or biswas and to take possession thereof and that a pragmatic approach has to be adopted by the Court. It is also clear that one of the methods of taking possession and handing it over to the beneficiary department is the recording of a Panchnama which can in itself constitute evidence of the fact that possession had been taken and the land had vested absolutely in the Government.

42. u/s 9(1) of the Act, public notice has to be given stating that the Government intends to take possession of the land. Proviso to Section 17(2) makes it clear that for taking possession of the building or any part of the building under the sub-section, 48 hours notice is necessary. In the instant case, individual notices have been given to the khatedars and there was direction issued by the Land Acquisition Officer of UIT, Jodhpur to give intimation to the khatedars and to publish the notice at the conspicuous places in the villages. The said notice was issued on 11.2.2003 and they were required to submit their objections on 26.2.2003 at 10:00 AM. The notice was also affixed at conspicuous places as apparent from the panchnamas dated 11.2.2003 (R/10 collectively). There was beat of drum also. Consequently, we find that the provisions of the Act for taking the possession were duly complied with and the panchnama of taking over of possession was drawn on 26.2.2003. That is accepted mode of taking possession. When individual notice has already been served, that was enough to take possession of other property also including the land. Thus, we find on facts of the instant case from plethora of documents placed on record of process of taking possession, that the possession had been duly taken in the instant case. When possession had been taken from one of the petitioners as admitted by Mr. Singhvi, obviously, it was taken of all the property from others also. It was not act of individually taking possession from petitioners of CWP No. 1798/2001. The proceedings were common. Though we are not examining whether there was violation of the interim order passed in these proceedings but there is explanation offered by the respondents in that regard.

43. Shri Bhoot has also referred to the letter dated 9.7.2003 to indicate that it has been mentioned that the petitioners Ganesh Ram and others in SAW No. 51/2007 were in possession of the land. As already mentioned that the possession had been taken over by the State after drawing of the panchnamas

and any possession entered thereafter is deemed to be unlawful and that of trespasser.

44. The submission raised that the money was not available at the time when the possession had been taken and it was necessary to offer 80% of the compensation along with the steps taken u/s 17(3A) of the Act. In the instant case, possession had been taken in the year 2003. The submission cannot be accepted in view of the decision rendered by the Hon''ble Apex Court in Satendra Prasad Jain and Others Vs. State of U.P. and Others, , in which it has been laid down that Section 17(3A) postulates that the owner will be offered an amount equivalent to 80% of the estimated compensation for the land before the Government takes possession of it u/s 17(1). Section 11A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80% of the estimated compensation. In the said case, 80% of the estimated compensation was not paid to the appellants-land owners. The Hon''ble Apex Court held that, that does not mean that the possession was taken illegally or that the land did not thereupon vest in the first respondent. As interest can be awarded for delayed payment of compensation, we are not inclined to make interference and to hold that acquisition becomes bad in law on the aforesaid count. Resultantly, we are of the opinion that there is no merit in D.B. Civil Special Appeal (Writ) No. 42/2007 arising out of S.B. Civil Writ Petition No. 1798/2001 which was filed in the year 2001. Other writ applications, out of which these intra court appeals arise, are liable to be dismissed on the ground of delay and laches, having been filed after passing of the award and the land vest absolutely in the State. Besides this, we have examined them on merits also and we have found them equally to be merit-less.

Consequently, all these intra court appeals are dismissed. We leave the parties to bear the costs incurred of the appeals.