

(2014) 01 AHC CK 0266

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 41948 of 2012

Govind Prasad Shukla and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Constitution of India, 1950 — Article 141, 226, 300A

Land Acquisition Act, 1894 — Section 11, 11A, 11-A, 16, 17

Citation : (2014) 2 ADJ 85 : (2014) 3 ALJ 630 : (2014) 103 ALR 96 : (2014) 4 AWC 3547 : (2014) 122 RD 778 : (2014) 1 UPLBEC 812

Hon'ble Judges : Mahesh Chandra Tripathi, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : Pankaj Dubey and Madhup Narain Shukla, Advocate for the Appellant

Judgement

Mahesh Chandra Tripathi, J.—We have heard Sri Pankaj Dubey, learned counsel for the petitioners and Sri Suresh Singh, learned Additional Chief Standing Counsel for the respondents. Parties have exchanged their affidavits. With the consent of the learned counsel for the parties, the writ petition is being finally disposed of at the admission stage itself.

2. In the present writ petition, petitioners have prayed for following reliefs:

(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned notification No. 4240/08-27-Si.-3-36 Adhisuchana/2008 dated 26.11.2008 u/s 4 of Land Acquisition Act and impugned notification No. 3225/10-27-Si.-3-36 Adhisuchana/2008 dated 19.8.2010 u/s 6 of Land Acquisition Act, 1894 in respect of the petitioner land comprising of Plot No. 164 area 1-0-0 i.e. 0.2530 hectare of the revenue village Saharay, Pargana Amora, Tappa Ramgarh, District-Basti (Annexures 3 and 4 of the writ petition).

(ii) To issue writ, order or direction in the nature of mandamus commanding the respondents not to give effect to the impugned notification dated 26.11.2008 u/s 4 and the impugned notification dated 19.8.2010 u/s 6 of the Act and not to

dispossess and not to interfere into the peaceful possession of the petitioners over the Plot No. 164 area 1-0-0 i.e. 0.2530 hectare of the revenue village Saharay, Pargana Amora, Tappa Ramgarh, District Basti.

(iii) To issue any other order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the case.

(iv) To award the cost of the petition to this petitioners.

3. The facts enumerated in the present writ petition are that the petitioners are co-owner of the plot No, 164 area 1-0-0 i.e. 0.2530 hectare of the revenue village Saha Rai, Pargana Amora, Tappa Ramgarh, District Basti. In the present matter, gazette notification No. 4240/08-27-Si.-3-36 Adhisuchana/2008 u/s 4(1) read with Section 17(1) and 17(4) of the Land Acquisition Act, 1894 (hereinbelow referred as "Act" in short) has been issued on 26.11.2008 corrigendum on 20.2.2009 of area 0.2530 hectare and last local publication was made on 25.2.2010. The Section 6/17(1) of the Act was gazetted on 19.8.2010 and published in two newspapers, namely, in Swatantra Chetana on 11.3.2011 and Amar Ujala on 12.3.2011. The said acquisition proceeding had been commenced for the construction of Khamaria Rajwaha Canal for irrigation purposes. The petitioners by means of the present writ petition has opposed the acquisition proceeding challenging the act of the respondent-authority specially on the ground of mechanically issuing the notifications u/s 4 & 6, the whole acquisition proceedings are void, unconstitutional, tainted with mala fide, abuse of authority and power and non application of mind and further challenging the acquisition proceeding that the requirements of Section 5-A of the Act are mandatory and non compliance of the same would vitiate the entire acquisition proceeding and further contended that due to non making of award u/s 11-A of the Act, the entire proceeding of the Act would lapse. A detailed counter-affidavit has been filed on behalf of the respondents wherein it has been asserted that the notification u/s 4(1)/17(1) and (4) of the Act and declaration of notification issued in official gazette u/s 6/17(1) of the Act by which the plots of the petitioners have been acquired for construction of canal and emphatically denied the allegations levelled by the petitioners. The relevant paragraphs of the counter-affidavit are as follows:

4. That in paragraph Nos. 3, 4 and 5 of the writ petition, it is admitted that the plot No. 164 is recorded in the name of the petitioners which is situated in village Saharay Pargana Amorha, Tappa Ramgarh, District Basti and the total area of Plot No. 164 is 1.419 hectares and out of the above area, the area of 0.367 hectare of Plot No. 164 was taken by mutual consent of the tenure-holders for the construction of Khamaria Rajwaha Canal for irrigation purposes. It is submitted that after taking the above area and after making payment to the tenure-holders, the construction of canal was completed and thereafter more land is needed for further construction of canal. It is further submitted that Section 4 notification of Land Acquisition Act was issued for acquirement of part of Plot No. 164 i.e. 0.253 hectares. After issuance of notification u/s 4 and

thereafter u/s 6, steps were taken for making compensation to the tenure-holders for the part of area i.e. 0.253 hectare.

5. That the contents of paragraph No. 6 of the writ petition are absolutely false hence denied. It is respectfully submitted that the land was acquired for construction of canal and there was no mala fide intention of any sort in the acquirement. It is submitted that the construction of canal would be beneficiary to thousands of farmers.

7. That the contents of paragraph No. 8 of the writ petition are not admitted as stated hence denied. It is submitted that the land under acquisition was immediately needed for construction of canal for the benefit of farmers, therefore, there was urgency and the provisions of Section 5-A of the Land Acquisition Act was invoked. The acquirement is strictly in accordance with the law and there is no illegality in the same.

8. That the contents of paragraph No. 9 of the writ petition are not admitted as stated hence denied. It is wrong to say that the provision of Section 5-A of the Land Acquisition Act cannot be invoked for public purposes. Raising of construction of Rajwaha is for irrigation of fields of thousands of farmers and it is a national policy.

9. That the contents of paragraph Nos. 10 and 11 of the writ petition are not admitted as stated hence denied. It is respectfully submitted that the notification under Sections 4 and 6 of the Land Acquisition Act and dispersion of enquiry and invoking urgency clauses have been issued strictly in accordance with the provision of Land Acquisition Act and there is no illegality in the same. It is further stated that the part of plot No. 164 i.e. 0.253 hectares is transferred with possession to the Irrigation Department for the construction of canal. The answering respondents are filing copy of the possession memo alongwith this counter-affidavit and the same is marked as Annexure-CA-1 to this counter-affidavit.

10. That the contents of paragraph Nos. 12 and 13 of the writ petition are not admitted as stated hence denied. It is submitted that the alleged objection was not filed after the declaration of Section 6. The objection was filed by the petitioner No. 1 on 14.8.2012.

11. That the contents of paragraph No. 14 of the writ petition as stated are not admitted hence denied. It is stated that the acquisition of land 0.253 hectare of plot No. 164 has been made for the purposes of construction of Khamaria Rajwaha and earlier acquisition was done for Khamaria Miner K. 20.152 to 21.00 so the different purposes are apparent. The petitioner has filed the present writ petition by misconstruing the true facts.

12. That the contents of paragraph Nos. 15 and 16 of the writ petition are absolutely false, hence denied. It is submitted that after acquisition part of plot No. 164 was required for construction of Khamaria Rajwaha and now the award

has already been made and notices were issued to the tenure-holders calling upon them to receive the compensation. Therefore, there was no mala fide intention for the acquirement. The construction of canal is in the interest of farmers of the concerning village and that too has been taken in accordance with the provision of Land Acquisition Act.

14. That the contents of paragraph No. 20 of the writ petition are absolutely false hence denied. It is respectfully submitted that the award has been published on 14.8.2012 and the total compensation amount is fixed Rs. 4,22,282.68 but the tenure-holders are not taking the compensation. True Photostat copy of the award dated 14.8.2012 is being annexed herewith and marked as Annexure-CA-2 to this counter-affidavit.

15. That the contents of Paragraph Nos. 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the writ petition are not admitted as stated hence denied. It is pertinent to point here that after the publication of the award on 14.8.2012, two notices were given to the tenure-holders calling upon them to appear and receive compensation in the office of Special Land Acquisition Officer, Basti. Photostat copies of the notices dated 28.8.2012 and 15.10.2012 are being filed herewith collectively and marked as Annexure-CA-3 to this counter-affidavit.

4. It is further relevant to mention that in the present matter, supplementary counter-affidavit had also been filed on behalf of the respondents and some relevant facts have also been brought on record. The relevant paragraphs of the supplementary counter-affidavit are as follows:

4. That prior to the year 2000, the Irrigation Department proceeded to construct a canal which was total of 27.5 km long. The aforesaid canal passes through the village Saharai, Pargana Amodha, Tappa Ramgarh, District Basti also. A "land case" was made for the plots of the aforesaid village, through which the proposed canal was passing through and the area of land of those plots which were to be acquired for the construction of the aforesaid canal of the village Saharai. A copy of the land case wherein all the plots of village Saharai are mentioned and the area of land needed for the construction of canal from those plots are also given is being filed herewith and marked as Annexure 1 to this affidavit.

5. That in the aforesaid land case, it is specifically mentioned that from the plot No. 164 the area of land required for construction of canal was 01 bigha, 09 bishwa, which is equivalent to 0.905 acre or 0.367 hectare.

6. That all the land which were required for the construction of canal was acquired from the individual Bhumidhari through separate sale deed. In similar manner a sale deed dated 22.11.2000 with respect to plot No. 164 was executed between the petitioner and the respondent authorities in respect to area of land required from the plot No. 164. But due to some error on the part of the then Revenue Authorities instead of 01 bigha 09 biswa of land, the sale deed was executed only for 09 biswa of land from the plot No. 164.

7. That aforesaid mistake was found during the course of construction activity when for the purpose of constructing the service road on the west bank of the canal, the land was found to be short and on verification it was found that the complete land from plot No. 164 was not acquired the petitioner. The respondent authorities then tried to convince the petitioner for the sale of remaining area of land required from his plot. But he did not agree for the same. In view of aforesaid exigency, the respondent authorities had to resort or acquiring the aforesaid land under the provisions of the Land Acquisition Act and therefore, the acquisition proceedings in question was started.

8. That though the award in respect to the present acquisition proceedings had already been passed, but the petitioners have refused to receive the same.

9. That it is relevant to mention here that the canal in question is already running and the entire patch of construction is complete. However, due to present litigation and the rigid stand of the petitioners, the construction of service road on the west bank of the canal of plot No. 164 could not be constructed, whereas the service road on the adjacent land to the petitioners' land have already been completed. For placing the clear picture this Hon'ble Court a copy of the Sajara Map of the canal and cross section of the required construction on the plot No. 164 is being filed herewith and marked as Annexure No. 2 and 3 respectively to this affidavit.

10. That, it is relevant to mention at this state that in paragraph No. 4 of the counter-affidavit, filed before this Hon'ble Court on behalf of respondents due to some clerical mistake some incorrect information has been placed before this Hon'ble Court and the same is being clarified in the present supplementary-affidavit.

11. That, as mentioned in the preceding paragraphs of this supplementary-affidavit the total area of land required for the construction of canal on plot No. 164 was 0.367 hectare out of which through sale deed an area of 0.114 hectare was initially acquired from the petitioners and now through the present acquisition proceedings the remaining area of 0.253 hectare is needed by the respondent authorities for the construction of service road on the west bank of the canal on plot No. 164.

12. That, it is again reiterated that though the canal is functional but due to present litigation the service road on the west bank of the canal could not be constructed on plot No. 164. It is for this purpose that the present acquisition proceeding has been undertaken by the State authorities. The same has been done in accordance with law and the petitioners are not entitled for any relief from this Hon'ble Court in the present case.

5. In the present matter, prior to the year 2000, the Irrigation Department proceeded to construct canal which was approximately 27.5 km long and the said canal passes through village Saharai, Pargana Amodha, Tappa Ramgarh, District Basti. It is important to mention, as per the record, it is apparent that there was

no major litigation regarding the construction of the canal and it had also been brought into the notice that the said canal is functional at present. In the present matter, the dispute is only with regard to the plot No. 164 area of 01 bigha, 09 bishwa which is required for construction of canal and service road on the west bank of the canal. Initially, the land which were required for construction of canal were acquired from individual bhumidhari through registered sale deed, similarly the sale deed dated 22.11.2000 was also executed regarding plot No. 164 between the petitioners and respondent-authority but due to some error the revenue authorities instead of 1 bigha and 9 bishwa which were required for the construction of canal and side road only for 9 bishwa land registry took place and eventually, this error could only be discovered after the construction of the canal and when the remaining land was required for the construction of service road on the west bank of canal then it had been found that the remaining land was also been proposed but unfortunately due to some error on the part of the revenue authorities, the same could not be acquired way back early in 2000 and no sale deed with regard to the remaining land took place in the said year. When the whole canal had become functional and the service road which required on the west bank of the canal then the authorities had also requested the petitioners and tried to convince that sale deed may also be executed for the remaining piece of land which was urgently required for the service road otherwise the villagers would have great inconvenience in absence of service road on west bank of the canal for the reason best known to the petitioners, they had not agreed for the same land and in aforementioned facts and circumstances, the authorities had no option except notifying the land for acquisition.

6. Bare perusal of the record, it is also apparent, that initially gazette notification under Sections 4(1)/17(1) and 17(4) had been made on 26.11.2008 and finally the last local publication of Sections 4(1)/17(1) and 17(4) took place on 5.6.2010 and on 19.8.2010, the final publication u/s 6 alongwith 17(1) of the Act had been gazetted. The events clearly prove that initially when the construction of the canal took place in the early 2000, probably each and every tenure-holder had volunteered and had not created any hindrance in smooth construction of the canal and even the petitioners had also volunteered and executed sale deed for some piece of land of the same plot in favour of the State Government and only on the basis of such amicable settlement between the authorities and the tenure-holders, the canal could be constructed. Once the negotiation failed with the present petitioner for construction of service road on the west bank of the canal, the authority had no option except to put the land for compulsory acquisition.

7. Sri Pankaj Dubey, learned counsel for the petitioners submitted that there had been great delay in publication of gazette notification u/s 6 of the Act and the matter is squarely covered with the judgment of Hon''ble Apex Court in the case of Dev Sharan and Others Vs. State of U.P. and Others, . He had also relied upon the decision of Hon''ble Apex Court in the case of Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, , where it was held that the authority

is required to record his satisfaction as to why applicability of Section 5-A of the Act is to be dispensed with. He has also relied upon the judgment of Hon"ble Apex Court in the case of Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, . He further submitted that till today no award has been made and in view of the Section 11-A of the Act, the entire proceeding of the acquisition has lapsed.

8. We have heard rival submissions and perused the record. In the present matter, as per record, it reveals that the canal of total 27.4 km long had been constructed and only very small piece of land approximately .2530 hectare land was put under the acquisition for construction of service road on the west bank of canal. It has also been stated in the supplementary counter-affidavit filed by the answering respondent that the service road on the adjacent land to the petitioners" land have already been completed. In this regard, they have also filed Sajara map of the canal and cross section which is required for construction on the plot No. 164 (disputed plot). In these circumstances, the State Government has invoked the urgency clause specially Sections 17(1) and 17(4) of the Act. The Hon"ble Apex Court in First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, , has summed up with regard to the invoking urgency clause in Paragraph No. 5 as follows:

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 5(A) 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 under Sections 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.

9. The Hon'ble Apex Court had also considered regarding the invocation of urgency and subjective satisfaction of the Government in the cases of *Jage Ram and Others Vs. State of Haryana and Others*, ; *Deepak Pahwa v. Lt. Governor of Delhi and others*, AIR 1984 SC 1020, *Hari Singh and Others Vs. State of U.P. and Others*, ; *State of U.P. Vs. Smt. Pista Devi and Others*, ; *S.S. Darshan Vs. State of Karnataka and others*, , *Union of India and others Vs. Praveen Gupta and others*, , *Bhagat Singh Vs. State of U.P. and Others*, , and *Amar Singh and Others Vs. State of U.P. and Others*, .

10. The learned Additional Chief Standing Counsel has also contended that the petitioners are holding very small portion of land subjected to compulsory acquisition by the State Government and the larger public purposes may not allowed to be defeated for the small piece of land owned by the petitioners.

11. It is well-settled that inquiry required u/s 5-A of the Act can be dispensed with in exercise of power u/s 17(4) of the Act only in grave urgency and in exceptional circumstances and the decision of the authority must be based on material on record to support the same (bearing in mind the objections u/s 5-A of the Act) otherwise it would amount to arbitrary exercise of power and denial of administrative fairness in absence of real and genuine urgency it may not be appropriate to deprive an aggrieved on fair and just opportunity by putting forth his objection for due consideration of the authority concerned. In the present matter, we have also visualize a situation under which the present acquisition had commenced, where the whole canal had been constructed and the authorities were actively involved in negotiating to the tenure-holders for this piece of land which were urgently required for the construction of side road. It is

relevant to mention that in the present matter, Section 4(1)/Sections 17(1) and 17(4) had been gazetted on 26.11.2008 and the last local publication of Sections 4(1)/17(1) and (4) took place on 5.6.2010 and immediately on 19.8.2010 the final declaration u/s 6 alongwith Section 17 had been made. Bare scrutiny of the fact and notifications, it transpires that there is in fact inordinate delay between gazette notification of Sections 4(1)/17(1) and (4) and the last publication of Sections 4(1)/17(1) and (4) on 5.6.2010.

12. To appreciate the correct fact, it would be appropriate to refer the relevant judgment in this regard in the case of Urban Improvement Trust, Udaipur Vs. Bheru Lal and Others, , relevant paragraphs is quoted as under:

9. We would first refer to relevant ingredients of Section 4 of the Act, which are as under:

Whenever it appears to appropriate Government that land in any locality is needed or likely to be needed for the public purpose or for a company

(1) a notification to that effect shall be published in the Official Gazette; and

(2) it is also required to be published in

(a) two daily newspapers circulating in that locality, and

(b) the Collector is required to cause public notice of the substance of such notification at convenient places in the locality;

(3) the last date of such publication and giving such public notice is considered as "the date of publication of the notification".

10. The publication of the notification made or prepared by the Government would be of no effect till it is published in the Official Gazette. That part of Section 4 is mandatory and is condition precedent for initiation of Land Acquisition proceedings.

11. As against this, Section 6 inter alia provides that when the appropriate Government is satisfied after considering the report, if any, made u/s 5A(2) that the land is needed for a public purpose or for a company

(1) a declaration shall be made to that effect under the signatures of a Secretary to such Government or of some officer duly authorised to certify its order; and,

(2) different declarations could be made from time to time in respect of different parcels of any land covered by the same notification u/s 4(1) of the Act.

(3) Further, under the Ist proviso to the said section, it is inter alia provided that no declaration in respect of a particular land covered by notification u/s 4(1) shall be made after the expiry of one year from "the date of publication of the notification".

12. Sub-section (2) of Section 6 thereafter provides that every such declaration

is required to be published in the official gazette and in two daily newspapers circulated in the locality and also the Collector is required to cause public notice of the substance of such declaration at the convenient places in the said locality.

13. From the different phraseology used in Sections 4(1) and 6(1), it is apparent that u/s 4(1) publication in the official gazette is a condition precedent for acquiring the land.

14. As against this, Section 6(1) provides that if the appropriate Government is satisfied that any particular land is needed for a public purpose or for a company, a declaration is to be made to that effect under the signature of the Secretary of such Government or of some officer duly authorised to certify its order. Further, such declaration is to be made within a period of one year from the date of publication of the notification u/s 4(1) of the Act. Hence, Section 6(1) does not require that such declaration could not be published in the official gazette after expiry of one year from the date of publication of the notification u/s 4(1). Time limit of one year is prescribed to a declaration to be made that land is needed for a public purpose under the signature of a Secretary or authorised officer to such Government.

13. In this view of the matter, in the present case, the relevant dates for consideration would be 26.11.2008 when the substance of notification under Sections 4(1)/17(1) and 17(4) was published and local publication of the same notification which took place on 5.6.2010 and next notification u/s 6 alongwith Section 17(1) which took place on 19.8.2010. Therefore, the submission made by Sri Pankaj Dubey, Advocate is not tenable in law that the notification would lapse on account of more than one year but in fact the last publication of Sections 4(1)/17(1) and (4) took place on 5.6.2010 and the gazette notification of Section 6/17(1) took place on 19.8.2010, the same is within one year, within prescribed period. It is no doubt that there had been some delay while making the initial notification and the final declaration.

14. A Bench of three Hon"ble Judges of the Supreme Court in Chameli Singh and others v. State of U.P. and another, reiterated the similar view observing as under:

31. It is true that there was pre-notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry u/s 5-A. As held by this Court, the delay by itself accelerates the urgency: Larger the delay, greater be the urgency.... When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the Court, not being an appellate forum, would not disturb the finding unless the Court conclusively finds the exercise of the power mala fide.... The lethargy on the part of the officers for pre and post-notification delay would not render the exercise of the power to invoke urgency clause invalid on that account.

32. It is evident that while deciding *Om Prakash and Nirodhi Pakash Gangoli* (supra), the judgments of the larger Benches in *Deepak Pahwa & Chameli Singh* (supra) had not been brought to the notice of the Apex Court.

33. Undoubtedly, when there is a conflict or inconsistency in the judgments of the Apex Court, judgment of the larger Bench is to be followed vide *Union of India and another v. K.S. Subramanian*; *State of U.P. and others v. Ram Chandra Trivedi*; *Union of India and another v. Raghubir Singh (dead) by L.Rs. etc.*; *N. Meera Rani v. Government of Tamil Nadu and another*, *General Manager Telecom v. A. Srinivasa Rao and others*; *Bharat Petroleum Corporation Ltd. v. Mumbai Shramik Sangh*, *N.S. Giri v. Corporation of City of Manglore and others*; *Sub Inspector Roop Lal and another v. Lt. Governor Delhi and others*; *S.H. Rangappa v. State of Karnataka and others*; *P. Ramachandra Rao v. State of Karnataka*; *Babu Parasu Kaikadi (Dead) by Lrs. Vs. Babu (Dead) through Lrs.*, ; *Collector of Central Excise, Ahmedabad Vs. Orient Fabrics Pvt. Ltd.*, ; *Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another*, ; and *Hardev Motor Transport Vs. State of M.P. and Others*, .

34. Thus, in view of the above, we reach the inescapable conclusion that any lethargy on the part of the State Authorities which causes pre or post-notification delay, shall not render the invoking of the urgency powers and dispensation of inquiry u/s 5-A of the Act illegal or void.

35. In *Pista Devi* (supra), Hon"ble Supreme Court recognised the right of the Authority for whom the land was sought to be acquired, to communicate with State Government and place the material before it as the Court observed that communication between the State Government and the Meerut Development Authority could explain as to whether there was any delay, or whether there was any need to invoke the urgency provisions. The Court further observed that the "letters and the certificates submitted by the Collector and the Secretary of the Meerut Development Authority to the State Government before the issue of the notification u/s 4(1) of the Act clearly demonstrated that at that time there was a great urgency felt by them regarding the provision of housing accommodation at Meerut. The State Government acted upon the said report, certificates and other material which were before it." The Court further held that in the circumstances of the case, it cannot be said that the decision of the State Government in resorting to the urgency provision was unwarranted. Similarly in *Krishna Lal Arneja* (supra) the Apex Court took note of the fact that the delay may be caused or occasioned by the land owners themselves and, thus, such a delay would not vitiate the order passed for invoking urgency powers.

15. Therefore, in view of above, we reach to the conclusion that any lethargy on the part of State authority which cause pre and post notification delay shall not be render the invocation of urgency power and dispensation of inquiry u/s 5-A of the Act illegal or void, in the present matter, the land was required urgently for public purposes whereas more than 27 km canal has been constructed which run purely between agriculture area. We may also visualize the situation whenever

these irrigation facilities are being provided in the villages, the whole area is being developed on socio and economic front and villagers are benefited immensely by providing irrigation facility, even at present more than 70% Indian population is dependent on agriculture. There was no hue or cry regarding construction of the canal even the villagers themselves had volunteered in negotiation and finally the dream come true of the tenure-holders, those purely dependent on agriculture produce. In this background, for small piece of land, the urgency was required and inquiry as contemplated u/s 5-A of the Act has been dispensed with.

16. Therefore, the pre and post notification delay would not vitiate the acquisition proceeding. The Hon''ble Apex Court had also considered similar view in the case of State of Rajasthan and Others Vs. D.R. Laxmi and Others, , "wherein this Court has held that even the void proceedings need not be set at naught in all events".

17. It is well-settled legal proposition that scope of judicial review is limited to the decision making procedure and not against the decision of the authority. The Court may review to correct errors of law or fundamental procedure requirements, which may lead to manifest injustice and can interfere with the impugned order in exceptional circumstances. The power of judicial review of the writ Court is limited, but it has competence to examine as to whether there was material to form such opinion as required by law or the finding recorded by the authority concerned are perverse. It is settled law that non consideration of relevant material renders an order perverse. A finding is said to be perverse when the same is not supported by evidence brought on record or they are against the law where they suffer from vice of procedural irregularities.

18. In view of the aforesaid legal proposition, it emerges that land can be acquired for public purpose, the expression "public purpose" cannot be defined by giving a special definition as the same cannot be fitted in a straight jacket formula. The facts and circumstances of each case have to be examined to find whether the acquisition is for public purpose. It is also seen that in most of the matters, delay makes the problem more and more acute and increase urgency of necessity for acquisition. In the recent years, in most of the cases, it had been found that the competent authority had greatly misused the urgency provisions for their own convenience and ignored the valuable rights of a tenure-holder u/s 5-A of the Act. The Hon''ble Apex Court in Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, , Greater Noida Indusl. Devt. Auth. Vs. Devendra Kumar and Others, , have come to the conclusion that the notifications u/s 4 read with Section 17(1) and 17(4) had greatly misused and illegally the tenure-holders has been denied the valuable rights which is being provided u/s 5-A of the Act at the cost of profit earning activities which is the main reason that during recent years in different parts of the country there had been huge public opposition of compulsory land acquisition proceeding. At the same time it is also paramount duty of the Government to provide land for public purpose and the

same cannot be fitted in straight jacket formula. Each and every case is to be examined separately whether acquisition is for a public purpose or not. In the present matter the acquisition is not meant for any profit earning activity or the same is on behest of any private party but the land in question is urgently required for greater public purpose to create all necessary infrastructure so that canal may be fully functional which would create a great benefit to public at large, specially villagers those are actively involved in the agriculture. Therefore, we hold that there were every material or the basis on which the Government formed subjective decision for urgency and for dispensation of inquiry u/s 5-A of the Act. The land in question was urgently required for the construction of side road of canal.

19. Sri Pankaj Dubey has also contended that in the present matter on account of non declaration of an award u/s 11-A, the whole proceeding would also lapse. The claim set out by the petitioners are not justified on the ground that in the present matter, Section 17(1) and 17(4) of the Act had been invoked and as per the judgment of Hon"ble Apex Court in Satendra Prasad Jain and Others Vs. State of U.P. and Others, and Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, , the proceeding u/s 11-A would not lapse, under the compulsory acquisition if the possession has already taken, as per the provision of Section 16, the land in question vest in the State free from all encumbrances.

20. The Standing Counsel through affidavit has also brought into the notice that possession was taken over on 14.8.2012 and the award had also been made on 14.8.2012. The memo of possession and the award had been brought on record through Annexure CA-I and CA-II respectively. The Hon"ble Full Bench in the case of 972110--> , has considered the provisions of Section 11-A of the Act. The relevant paras is quoted below:

372. Learned counsel for the petitioners have submitted that after publication of declaration u/s 6 of the Act, in none of the cases award has been made u/s 11 within two years from the date of publication, hence, the entire proceedings for acquisition of the land has lapsed. Section 11A of the Act is as follows:

11A. Period within which an award shall be made.--(1) The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 the award shall be made within a period of two years from such commencement.

374. Learned counsel for the respondents submitted that Section 11A applies in the cases where Section 17 has not been invoked and in cases where Section 17 has not been invoked, there is no applicability of Section 11-A.

376. We have considered the submission of the learned counsel for the parties.

In Satendra Prasad Jain's case the issue was considered and it was held by the Apex Court that when Section 17 sub-section (1) is applied by reason of urgency, the Government takes possession of the land prior to the making of the award u/s 11 and thereupon the owner is divested of the title to the land which is vested in the Government as laid down in paragraph 15. The said view was reiterated by the Apex Court in Awadh Bihari Yadav and Others Vs. State of Bihar and Others, . The recent judgment of Banda Development Authority (supra) has also occasion to consider the said issue, relying on the decision of Satendra Prasad Jain. The argument on the basis of Section 11-A was repelled. In the present bunch of cases the State Government has invoked urgency clause u/s 17(1) and possession has been taken in all the cases exercising urgency power. The ratio laid down by Satendra Prasad Jain's case is fully attracted and the submission made by the learned counsel for the petitioners on the basis of Section 11A cannot be accepted.

377. Learned counsel for the petitioners submitted that the petitioners were not made payment of 80% of the compensation as required by Section 17(3-A) and as alleged the possession has been taken without payment of 80% compensation which violates Section 17(3A). It is contended that Section 17(3A) uses the word "shall" which has to be interpreted as a mandatory provision. It is submitted that when possession is to be taken u/s 17 sub-section 1, invoking urgency clause the award is not prepared and in preparation of the award several years are taken due to which Section 17(3-A) mandates that 80% of the compensation is to be paid. Non payment of 80% compensation is arbitrary, unjust and in view of the fact that without payment of compensation possession is claimed to have been taken. The entire acquisition deserves to be set aside on this ground alone. The above submission made by the learned counsel for the petitioners has been refuted by learned counsel appearing for the respondents. It is contended that the provision of Section 17(3-A) is directory. It is submitted that even if 80% compensation is not tendered/paid to the land holder, acquisition shall not be vitiated, reliance has again been placed on judgment of Satyendra Prasad Jain (supra) as well as the judgment of the Apex Court in Banda Development Authority (supra) and Awadh Bihari Yadav (supra).

378. The provisions of Section 17(3A) of the Act were considered by three Judge Bench in Satendra Prasad's Jain case, following was laid down by Apex Court in paragraph 17:

In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated 27th June, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the

possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award.

379. Again in Awadh Bihari Yadav (supra)"s case the same proposition was laid down in paragraph 8 which is quoted below:

8. The sheet-anchor of the appellants plea is that the land acquisition proceedings have lapsed in view of Section 11-A of the Act. In order to understand the scope of the plea it will be useful to extract the relevant provisions of the Acts. [Section 6, Section 11, Section 11-A, Section 17 and Section 18(1)].

6. Declaration that land is required for a public purpose.--

(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made u/s 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) u/s 5-A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification u/s 4, sub-section (1),-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

11. Enquiry and award by Collector.--(1) on the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land at the date of the publication of the notifications u/s 4, sub-section (1), and into the respective interests of the compensation and shall make an award under his hand of -

(i) the true area of the land;

- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that no award shall be made by the Collector under this subsection without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908, (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.

11-A. Period within which an award shall be made.--The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.--In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

17. Special powers in cases of urgency.--(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 public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

XXX XXX XXX

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable,

the appropriate Government may direct that the provisions of Section 5-A shall not be 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 date of the publication of the notification u/s 4, sub-section (1).

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.--

(1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the Acquisition of any land of which possession has not been taken.

It was contended that in view of Section 11-A of the Act the entire land acquisition proceedings lapsed as no award u/s 11 had been made within 2 years from the date of commencement of the Land Acquisition Amendment Act, 1984. We are of the view that the above plea has no force. In this case, the Government had taken possession of the land in question u/s 17(1) of the Act. It is not open to the Government to withdraw from the acquisition (Section 48 of the Act). In such a case, Section 11-A of the Act is not attracted and the acquisition proceedings would not lapse, even if it is assumed that no award was made within the period prescribed by Section 11-A of the Act. Delivering the Judgment of a Three Member Bench of this Court, in *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, , S.P. Bharucha, J., at page 374, paragraph 15, stated the law thus:

Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made u/s 11. Upon the taking of possession, the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration u/s 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending, and by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award u/s 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisition u/s 17, because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.

(Emphasis supplied)

We, therefore, hold that the land acquisition proceedings in the instant case did not lapse.

380. Recent judgment of the Supreme Court in Delhi Airtech Services Pvt. Ltd. and Another Vs. State of U.P. and Another, , needs to be noted in this context. The provisions of Section 17(3A) as well as 11A of the Act came for consideration before the Apex Court. Submission was made that payment of 80% compensation as contemplated u/s 17(3A) is a condition precedent for taking possession u/s 17(1). It was contended that unless the provision is interpreted as mandatory the whole purpose and object shall be frustrated. The two judge Bench which heard the matters in M/s. Delhi Airtech Services Pvt. Ltd. deferred on the interpretation of Section 17(3-A). Hon. Justice Ashok Kumar Ganguli held the provisions of Section 17(3A) mandatory. Following was laid down in paragraphs 72 and 74:

72. On the above premise, taking over a possession of land without complying with the requirement of Section 17(3A) is clearly illegal and in clear violation of the statutory provision which automatically violates the constitutional guarantee under Article 300A. A passing observation to the contrary in S.P. Jain (supra) must pass sub silentio being unnecessary in the facts of the case as otherwise such a finding is per incuriam, being in violation of the statute. A fortiori the said finding cannot be sustained as a binding precedent.

74. This Court further holds that in all cases of emergency acquisition u/s 17, the requirement of payment u/s 17(3A) must be complied with. As the provision of Section 17(1) and Section 17(2) cannot be worked out without complying with requirement of payment u/s 17(3A) which is in the nature of condition precedent. If Section 17(3A) is not complied with, the vesting u/s 17(1) and Section 17(2) cannot take place. Therefore, emergency acquisition without complying with Section 17(3A) is illegal. This is the plain intention of the statute which must be strictly construed. Any other construction, in my opinion, would lead to diluting the Rule of Law.

381. Hon. Justice Swatanter Kumar took a different opinion and relying on various judgment of this Court following the line of Satyendra Prasad Jain it was opined that Section 17(3-A) is not mandatory. Justice Swatanter Kumar further held that Section 11-A has no application to the acquisition proceedings u/s 17 of the Act. Following observation were made by Hon. Justice Swatanter Kumar in paragraph 117:

Consistent with the view expressed by this Court in the cases referred (supra), I am of the considered view that the provisions of Section 17(3A) of the Act are not mandatory. Such a conclusion can safely be arrived at, even for the reason that the Court would have to read into the provisions of Section 17(3A) consequences and a strict period of limitation within which amount should be deposited, which has not been provided by the Legislature itself in that section. The consequences and contingencies arising from non-compliance of the said provisions have not been stated in the Act. Once the land has vested in the Government, non-compliance with the obligation of payment of 80 per cent of estimated compensation would not render the possession taken u/s 17 as illegal.

The land cannot be revested or reverted back to the claimants as no provisions under the Act so prescribe. Furthermore, if the interpretation put forward by the appellants is accepted, it would completely frustrate the objects and purpose of the Act, rather than advancing the same. The expression "shall" used in Section 17(3A) has to be understood in its correct perspective and is not to be construed as suggestive of the provisions being absolutely mandatory in its application. Inter alia for these reasons and as per the above discussions, I hold that the provisions of Section 17(3A) are not mandatory. They are directive provisions, though their compliance is necessary in terms of the Act.

382. There being difference of opinion the matter was directed to be placed before Hon. Chief Justice for reference to larger bench to resolve the divergent views expressed in both the judgments and to answer the questions of law framed. From the above, it is clear that the issue is yet to be considered by larger Bench of the Apex Court on Section 17(3A). However, we are bound to follow the law as it exists today which is a binding precedent under Article 141 of the Constitution of India. The judgment in Satyendra Prasad Jain will hold the field hence the submission of the petitioner at present that Section 17(3) A is mandatory, non compliance of which vitiate the acquisition cannot be accepted.

21. It is relevant to quote the observation made by the Hon"ble Apex Court in the case of Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, , in paragraph No. 10 which is given as under:

10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with china economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in Courts. These challenge the acquisition proceedings in Courts. These challenges are generally in shape of writ petitions filed on High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their power or grant in stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the

public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 -indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the Courts while dealing with challenges to acquisition proceedings.

In view of above discussion, for the reasons stated aforesaid, we do not find challenge of acquisition is hit by any ground taken by the petitioners. We find there was sufficient material for invocation of urgency clause for acquiring the land and dispensing with the inquiry. We also find that apart from the petitioners, there were no challenge with regard to acquisition and whole canal of approximately 27 km have already become functional. Therefore, the petitioners would not suffer any hardship, if the land measuring .2530 hectare at revenue village, Sahary District Basti is acquired for construction of service road on the west bank of canal. The same is acquired under compulsory acquisition which is a public purpose for which the land is to be urgently needed.

The writ petition is dismissed.