

(2016) 09 AHC CK 0206
In the Allahabad High Court
Case No : Writ C. No. 4986 of 2005.

Hatam Singh and Others - Petitioners @HASH State of U.P. and another

Date of Decision : 09-09-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), Section 17(4), Section 4(1), Section 5(A),
Section 6(1)
Uttar Pradesh Industrial Area Development Act, 1976 — Section 3
Uttar Pradesh Land Revenue Act, 1901 — Section 11(2)
Uttar Prad

Citation : (2016) 10 ADJ 578 : (2016) 4 UPLBEC 2811

Hon'ble Judges : Sudhir Agarwal and Shamsheer Bahadur Singh, JJ.

Bench : Division Bench

Advocate : Shiv Kant Mishra, Advocate, for the Petitioner; C.S.C. and Mahendra Pratap, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sudhir Agarwal, J. - Petitioners in all these writ petitions have assailed notifications dated 16th October, 2004 published under Section 4(1) of Land Acquisition Act, 1894 (hereinafter referred to as "Act, 1894") and dated 28th November, 2005 published under Section 6 (1) of Act, 1894, proposing to acquire 387-0-5 bighas (229.3828 acres) of land, comprising a large number of khasras in Village-Mohiuddinpur Kanawani, Pargana Loni, District Ghaziabad for the purpose of "Planned Development", (for construction of residential colonies) at the instance of Ghaziabad Development Authority (hereinafter referred to as "GDA"), in public interest. State Government also exercised powers under Section 17(1) and (4) and dispensed with inquiry contemplated under Section 5A of "Act, 1894".

2. Details of petitioners and respective plots belong to them, which are in dispute and subject matter of acquisition in question, are as under:

Sl. No.

Writ Petition

Petitioners" name

Details of Kharsa/Gata no.

Area (in bigha/ hectare/ sq yd)

1.

4986 of 2005

1. Hatam Singh

2. Jagat Singh

3. Khajan Singh

4. Deepak Singh

5. Devendra Singh

6. Shakuntala Devi

256/2

299

381

457/1

450

1-1-5

(3214.06 sq yd)

2-0-0

(6050 sq yd)

1-17-0)

(5596.25 sq yd)

0-10-0

(1512.05 sq yd)

1-0-0

(3025 sq yd)

2.

35668 of 2005

Smt. Deepa Garg

153M

154M

155M

152

147M

147M

0-9-0

(1361.25 sq yd)

0-14-0

(2117.5 sq yd)

0-12-8

(1875.496 sq yd)

0-14-0

(2117.5sq yd)

0-5-0

(756.25 sq yd)

0-13-0

(1966.25 sq yd)

3.

39171 of 2005

M/s. Shri Nemi Nath Foundation

278

279

1-4-7 (?th share

(3682.934 sq yd)

0-10-0

(1512.5 sq yd)

4.

76749 of 2005

1. Sri Dharam Singh

2. Sri Karan Singh

3. Smt. Mayawati
 4. Smt. Kisan Dai
 5. Sri Bool Chand
 6. Sri Chatar Singh
 7. Sri Kabool Singh
 8. Sri Kishan Lal
 9. Sri Layak Ram
 10. Sri Dheeraj Singh
 11. Sri Deep Chand
 12. Sri Mahendra Singh
 13. Sri Ravinder Kumar
 14. Sri Surinder Kumar
 15. Smt. Raj Kali
 16. Sri Sukhbir Singh
 17. Sri Tej Singh
 18. Sri Khajan Singh
 19. Smt. Harkali
 20. Sri Suraj Singh
 21. Sri Chander Singh
 22. Sri Bed Ram
 23. Sri Prem Raj
 24. Sri Jabar Singh
 25. Sri Nawal Singh
 26. Sri Kanwar Singh.
 27. Sri Bhanwar Singh
 28. Sri Vir Singh
- 454
- 455
- 463
- 303

304

289

291

437

438

495

491

453

452

451M

454

501

259

510

514

515

454M

455M

440

300 sq. yard

1-6-0

(3932.5 sq yd)

0-18-0

(2722.5 sq yd)

1-10-0

(4537.5 sq yd)

0-13-0

(1966.25 sq yd)

2-8-0

(7260 sq yd)

1-1-0
(3176.25 sq yd)
0-8-0
(1210 sq yd)
0-16-0
(2420 sq yd)
0-17-0
(2571.2 sq yd)
0-12-0
(1815 sq yd)
1-2-0
(3327.5 sq yd)
0-11.5-0
(1739.375 sq yd)
1-10-5
(4775.31 sq yd)
0-8-0
(1210 sq yd)
0-6-0
(907.5 sq yd)
1-0-0
(3025 sq yd)
0-17-0
(2571.25 sq yd)
1-10-0
(4537.5 sq yd)
0-2-15
(415.93 sq yd)
0-15-10
(9830 sq yd)

2-3-10

(6589.37 sq yd)

5.

76751 of 2005

1. Pushpendra Kumar Singh
2. Dharmendra Kumar Singh
3. Jitendra Kumar Singh

407

250 sq. yards

6.

77647 of 2005

1. Anoop Singh
2. Khem Chand
3. Udai Singh
4. Bhagwat Singh
5. Smt. Shanti Devi
6. Rajender Singh
7. Fateh Singh

511

456

257

516

0-17-0

(2571.25 sq yd)

0-15-5

(2382.18 sq yd)

0-15-0

(2268.75 sq yd)

0-16-0(?rd

(2420 sq yd)

7.

77668 of 2005

Smt. Devki Singh

380

382

3-6 1/4-0

(19057.5 sq yd)

1-6-0

(3932.5 sq yd)

8.

77670 of 2005

1. S.M. Chopra

2. Kiran Chopra

300

383

1-12-0

(4840 sq yd)

1-12-0

(4840 sq yd)

9.

77902 of 2005

1. Raj Singh

2. Babu Lal

395

0-17-0

(2571.25 sq yd)

10.

78873 of 2005

1. Rita Devi

2. Brij Kishore

3. Ram Singh
4. Moti Pandit
5. Abdul Wahid
6. Indu Devi
7. Ganga Prasad
8. Devi Das
9. Sanjay Kumar Chorisya
10. Veer Singh
11. Umesh Kumar
12. Parmila Devi
13. Brij Lal Verma
14. Vinod Kumar Pandey
15. Sharmila Thakur
16. Ishwar Dayal
17. Vishnu Kumar Sharma
18. Desh Raj
19. Pushpa Devi
20. Kalpana Upadhya
21. Shahnaj
22. Nakul Thakur
23. Kavita
24. Rakesh Kumar
25. Rupa Devi
26. Satish Pandit
27. Pradeep Kumar Thakur
28. Laxman
29. Smt. Asha Devi
30. Raj Kumar
31. Amina Khatoon
32. Saroj Sanju

33. Kripal Singh
34. Shiv Shankar Tiwari
35. Dinesh Kumar Yadav
36. Rameshwar Shah
37. Kuldeep Kumar
38. Munim
39. Ram Vilash
40. Subhan
41. Pratap Singhv
42. Suresh Yadav
43. Bindeshwari Prasad
44. Ram Pal
45. Mool Chand
46. Salleddin Ansari
47. Surendra Gupta
48. Manohar Lal
49. Ranesh Kumar
50. Mantoon Mahto
51. Rachna Devi
52. Sonia
53. Sunil
54. Veer Singh
55. Bhupendra
56. Vinod Sharma
57. Vishnu Dev Mahto
58. Golik Kumar Mohanti
59. Karan Singh
60. Rajesh Thakur
61. Om Prakash Thakur
62. Ram Ashrey

63. Ashok Kumar
64. Ramesh Devi
65. Ram Dev Sharma
66. Raj Kumari
67. Shiv Prasad Singh
68. Omi
69. Anita
70. Rajesh Singh
71. Anju Sharma
72. Sarju Prashad
73. Leelawati
74. Mamta Devi
75. Maya Devi
76. Nand Kishore
77. Munni Lal
78. Radhe Shyam
79. Radhe Shyam
80. Anuj Gautam
81. Laxmi Devi
82. Rajesh Kumar Chaoudhary
83. Munnu Singh
84. Mansori Rai
85. Asha Devi Srivastava
86. Rattan Singh Pal
87. Prayag
88. Prem Singh Bist
89. Anil Kumar Mahto
90. Shiv Mohan Yadav
91. Jagdish Mahto
92. Raj Dulari

93. Manju Devi
94. Madhulika Singh
95. Champa Devi
96. Jyatri Devi
97. Badri Prashad
98. Ram Kewal
99. Chanchal Dhiman
100. Ravinder Nath
101. Guddu Verma
102. Ravi Shankar Mishra

482

483

226/5

6-13-0

(20116.25 sq yd)

0-3-10

(1966.25 sq yd)

10-0-12

(30340.744sq yd)

11.

363 of 2006

1. Sri Ratan Singh
2. Sri Dayanand
3. Sri Brahmanand
4. Sri Likhi Ram
5. Jagdish Prasad
6. Sri Mithan Singh
7. Sri Braham Singh
8. Sri Rajbeer Singh
9. Sri Jai Ram

10. Sri Jai Pal Singh
11. Sri Kishan
12. Sri Beer Singh
13. Sri Bhim Raj
14. Sri Suraj Singh
15. Sri Ajab Singh
16. Sri Mahendra Singh
17. Sri Jagmal
18. Sri Dharam Singh
19. Sri Mahendra Singh
20. Sri Sattan Singh
21. Sri Mani Ram
22. Sri Des Raj
23. Sri Ant Raj
24. Sri Ram Prakash
25. Sri Brij Pal
26. Sri Satveer
27. Sri Kavinder
28. Sri Narender
29. Sri Indra Raj
30. Sri Ishwar
31. Sri Naresh
32. Sri Dharmender
33. Smt. Jagwati
34. Sri Jabar Singh
35. Sri Nawal Singh
36. Sri Kanwar Singh
37. Sri Bhawarn Singh
38. Sri Beer Singh
39. Sri Mahesh

40. Sri Raj Kumar
41. Sri Manoj
42. Sri Vinod Kumar
43. Sri Tek Chand
44. Sri Sant Ram
45. Sri Hansa Ram
46. Sri Kara Singh
47. Sri Budh Ram
48. Sri Jai Pal
49. Sri Rampat Singh
50. Ratan Singh
51. Sri Braham Singh
52. Sri Jatan Singh
53. Sri Jagdish Singh
54. Sri Prem Singh
55. Sri Dharam Singh
56. Sri Charan Singh
57. Sri Bhagat Singh
58. Sri Chaman Singh
59. Sri Jagat Singh
60. Sri Desh Raj Singh
61. Sri Velu
62. Sri Satish
63. Sri Sita Ram
64. Sri Shree Pal
65. Sri Satender
66. Smt. Kanika Saraswat
67. Deewan Chand
68. Smt. Suresh
69. Sri Misri Lal

70. Sri Pyare Lal
71. Sri Om Beer
72. Smt. Biro Devi
73. Sri Bablu
74. Sri Narender
75. Sri Kavinder
76. Smt. Ram Kali
77. Sri Charan Singh
78. Sri Bhule Ram

240

411

413

517

497

454

494 & 495

447, 448, 449

502

488

419

504

440

419

504

419

504

420

440

419

504

420

440

441

494 & 495

441

258

487

539

516

488

418

458

0-4-0

(605sq yd)

1-5-0

(3781.25sq yd)

0-7-0

(1058.75sq yd)

1-0-0

(3025sq yd)

1-4-0

(3630sq yd)

1-4-0

(3630sq yd)

855 sq yard

4-9-0

(13461.25sq yd)

0-6-0

(907.5sq yd)

1-0-0

(3025sq yd)

1-15-0

(5293.75sq yd)

0-18-0

(2722.5sq yd)

3-14-2

(11207.624sq yd)

1-15-0

(5293.75sq yd

0-18-0

(2722.5sq yd)

1-15-0

5293.75sq yd)

0-18-0

(2722.5sq yd)

0-8-0

(1210sq yd)

3-14-2

(11207.624sq yd)

1-15-0

(5293.75sq yd)

0-18-0

(2722.5sq yd)

0-8-0

(1210sq yd)

3-14-2

(11207.624sq yd)

2-5-0

(6806.25sq yd)

0-8-7

(1262.934sq yd)

2-5-0

(6806.25sq yd)

0-14-0

(2117.5sq yd)

2-6-0

(6957.50sq yd)

1-6-0

(3932.5sq yd)

2400 sq yard

2-0-0

(6050sq yd)

1-0-0

(3025 sq yd)

0-12-0

(1815sq yd)

12.

1622 of 2006

1.Madhuban Sahkari Awas Samiti Ltd.

2. Anuradha

3. Smt. Mina Devi

315

348

347

349

350

351

310

344

345

0-11-0

(1663.75sq yd)

0-19-0

(2873.75sq yd)

0.5310

(6350.71sq yd)

0.2910

(3480.33sq yd)

0.2780

(3324.85sq yd)

0.6070

(7259.6sq yd)

0.3160

(3779.33sq yd)

0.1520

(1817.90sq yd)

0.3160

(3279.33sq yd)

13.

5495 of 2006

1. Dhan Pal

2. Ram Pal

3. Sardar Singh

4. Munshi

5. Ram Kishan

6. Pappu

7. Raje

8. Raj Pal

9. Mannu

10. Jagga

11. Smt. Sona Devi

237

406

432/2

0.291

(3480.33sq yd)

0-13-0

(1966.25sq yd)

0.253

(3025.85sq yd)

14.

5503 of 2006

1. Gaggan Deep Gandhi

2. Param Jeet Ghandhi

156

157

279

169

0.0380 h

(454.48sq yd)

0.3670 h

(4389.28sq yd)

0.2400

(2870.38sq yd)

0.1640

(1961.42sq yd)

15.

5505 of 2006

1. Anita Babbar

2. Rajani Babbar

3. Ashok Sachdeva

280

284

285

0-14-0

(2117.5sq yd)

1-1-19

(3319.928sq yd)

1-8-1

(4242.562sq yd)

16.

52592 of 2006

1. S.B.H. Sahkari Avas Samiti Limited

2. Dr. R.P. Singh

276

0-17-0

(2571.25sq yd)

17.

56295 of 2006

Jagat Singh

298

306

1400.125 sq yard

1663.75 sq yard

18.

56588 of 2006

1. Daya Nand Sharma

2. Brahma Nand Sharma

3. Lakhi Ram Sharma

4. Jagdish Sharma

5. Ram Chandra
6. Raj Veer Singh
7. Bhram Singh
8. Sri Chand
9. Kailash Chand
10. Janduva
11. Vijay Pal
12. Bheem Raj
13. Dilva
14. Suraj Singh
15. Chander Singh
16. Palm Ram Singh
17. Ved Ram Singh
18. Ramey Chand
19. Prem Singh
20. Rajesh Kumar Singhal

412

415/2M

392

393

414

409M

413M

416/2

409M

410

415M

417

229

400

439

523

524

447

449

448

490

522

482

165

239

259

0.0510

(609.95sq yd)

0.5190

(6207.18sq yd)

0.4430

(5298.24sq yd)

0.3290

(3934.81sq yd)

0.3410

(4078.32 sq yd)

11-4-15

(33993.43sq yd)

1-10-0

(4537.5sq yd)

0-15-2

(2283.874sq yd)

0.0160

(1913.58sq yd)

0.1640
(1961.42sq yd)
0.0130
(155.47sq yd)
0.2280
(2726.85sq yd)
1-3-0
(3478.75sq yd)
0-18-0
(2722.5sq yd)
2-16-0
(8470sq yd)
(1-6-0)/2
(3932.5sq yd)
(1-6-0)/2
(3932.5sq yd)
(0-13-0)/2
(1966.25sq yd)
(2-9-0)/2
(7411sq yd)
01/06/00
(3932.5sq yd)
1-5-0
(3781.25sq yd)
0-14-0/2
(2117.5sq yd)
0-3-0
(453.75sq yd)
01-14-3
(5165.186sq yd)

1-3-0

(3478.75sq yd)

0-6-0

(907.5sq yd)

19.

47797 of 2009

Shri Anil Kumar Jain

149

151

0.1260

(1506.95sq yd)

0.0130

(155.48sq yd)

20.

47339 of 2010

1. Ram Veer

2. Bhopal Singh

3. Mahesh Chand

4. Suresh Chand

5. Sanjay

6. Suresh Singh

7. Ratani

8. Hem Chand

9. Sukhpal

10. Kesh Ram

11. Sripal

12. Prem Singh

13. Zila Singh

14. Kishon Devi

15. Kheemraj

16. Khairati
17. Ratan Singh
18. Heera Lal
19. Tulsi Ram
20. Fateh Singh
21. Jagan
22. Parmal
23. Satish
24. Prem Singh
25. Brahm Prakash
26. Brijesh
27. Neeraj
28. Praveen
29. Pramod
30. Lala
249
0.5690
(6805.18 sq yd))
21.
4566 of 2011
Bhuley Ram
389
390
160 mtr
2120 mtr
22.
36270 of 2011
M/s. S.V. Liquor (India) Ltd.
406
0.8290 h

(9914.75sq yd)

23.

2476 of 2012

Balwant Rai Kathuria

300

302

0-2-0

(302.5 sq yd)

1-5-0

(3781.25 sq yd))

24

28223 of 2012

Amarjeet Kaur Gandhi

290

0-14-0

(2117.5 sq yd)

25.

37492 of 2012

1. Shyam Lal

2. Ram Kishan

3. Babu Ram

4. Dharam Veer

5. Chatar Singh

6. Bhoop Singh @ Pappu

7. Karan Singh

8. Smt. Leelawati

9. Gyano

10. Anoj

11. Kailash

12. Bhram Singh

13. Rampat
14. Jatan Singh
15. Ratan Singh
16. Jagdish
17. Prem Singh
18. Dharam Singh
19. Dhanpal
20. Rampal
21. Sardar Singh
22. Munshi
23. Bheem Singh
24. Bheem Saran
25. Maharaj Singh
26. Hem Chand @ Kalwa
27. Sukh Lal
237M
195 & 196
183
187
188
389
390
202
436
201
435
167
168
262
265

267

269

270

272

273

275

167

168

262

265

267

269

270

272

273

275

230

.2446 h

(2925.39sq yd)

.0418 h

(499.92sq yd)

.0890/2 h

(1064.43sq yd)

.2530/2 h

(3025.85sq yd)

.1900/2 h

(2272.38sq yd)

0.0160

(191.35sq yd)

0.2220

(2655 sq yd)
0.2660
(3181.33 sq yd)
0.2280
(2726.86 sq yd)
0.4170
(4987.28 sq yd)
0.3410
(4078.33 sq yd)
.1260/2
(1506.95 sq yd)
.1260/2
(1506.95 sq yd)
.2400/2
(2870.38 sq yd)
.3540/2
(4233.80 sq yd)
0510/2
(609.95 sq yd)
.1770/2
(2116.90 sq yd)
.1770/2
(2116.90 sq yd)
.2910/2
(3480.33 sq yd)
.1530/2
(1829.86 sq yd)
.2660/2
(3181.33 sq yd)
.1260/2

(1506.95 sq yd)

.1260/2

(1506.95 sq yd)

.2400/2

(2870.38 sq yd)

3540/2

(4233.80 sq yd)

.0510/2

(609.95 sq yd)

.0510/2

(2116.90 sq yd)

.1770/2

(2116.90 sq yd)

.2910/2

(3480.33 sq yd)

.1530/2

(1829.86 sq yd)

.2660/2

(3181.33sq yd)

0.3290

(3934.81sq yd)

26.

16390 of 2013

1. Surendra Singh

2. Devendra Singh

3. Vijendra Singh

4. Sanjay

5. Smt. Bala Devi

255

261

1-13-0

(4991.25 sq yd)

2-03-0

(6503.75 sq yd)

27.

17162 of 2013

1. Smt. Vimlelsh Bansal

2. Ankit Nagar

3. Anuj Nagar

4. Mahipal Singh

5. Surendra Pal Singh

285

25568.14 sq. mtr

28.

21562 of 2013

1. Sunil Sachdev

2. Harish Sachdev

3. Janak Sachdev

4. Naresh Chand

5. Jadish

6. Sitaram

7. Sripal

8. Satendra

9. Achaya

10. Smt. Rajrani

11. Sanjay Singh

12. Meghraj

13. Smt. Krishna Devi

14. Rajpal

15. Veerpal

16. Ranveer

17. Manveer

18. Mahipal

159

164

183

187M

188

195

196M

197

1-11-0

(1663.75 sq yd)

1-11-10

(1739.37 sq yd)

0-7-0

(1058.75 sq yd)

0-13-0

(1966.25 sq yd)

0-15-0

(2268.75 sq yd)

0-18-0

(2722.5 sq yd)

0-19-0

(2873.75 sq yd)

0-7-0

(1058.75 sq yd)

29.

21565 of 2013

1. Ratan Singh

2. Heera Lal
3. Tulsiram
4. Fateh Singh
5. Jagan
6. Parmal
7. Dayachand
8. Harbeer
9. Smt. Jagwati
10. Susrendra Singh
11. Devendra Singh
12. Vijendra Singh
13. Sanjay
14. Smt. Bala Devi
15. Sukhbir Singh Gusiya
16. Manjeet Singh Gusiya

161

274

459M

0-8-0

(1210 sq yd)

1-5-0

(3781.25)

0-9-0

(1361.25 sq yd)

30.

35161 of 2014

1. Desh Raj

2. Ant Raj

3. Braj Pal

4. Satyabir

5. Hansa Ram

7. Karan Singh

296

3. With the consent of parties, Writ Petition no. 4986 of 2005 (Hatam Singh and others v. State of U.P. and another) has been made leading case and a combined paper book of the aforesaid writ petitions including respective pleadings of parties has been filed which has been referred by respective counsels in all connected writ petitions during course of arguments.

4. Writ Petition no. 35161 of 2014 has been filed by some petitioners who had already filed Writ Petition no. 363 of 2006, challenging acquisition notifications and subsequent writ petition is in respect of subsequent action being taken by respondent-authority i.e. GDA, by publishing auction notice dated 11.07.2014, and therefore, it is connected with the same.

5. GDA required certain land for "Planned Development". On the requisition sent by GDA, forwarded by Collector, Ghaziabad, State Government published notification dated 16th October, 2004 under Section 4(1) of Act, 1894, proposing to acquire 387-0-5 bighas land at Village Mohiuddinpur, Kanawani, Pargana-Loni, District Ghaziabad. State Government, exercising powers under Sections 17(1) and (4), also declared that land in question is needed urgently, therefore, inquiry under Section 5A of Act, 1894 shall stand dispensed with. Thereafter, declaration was made under Section 6 (1) of "Act, 1894" vide notification dated 28th November, 2005, published in daily newspapers "Dainik Jagran" dated 1st December, 2005.

6. In respect of some petitioners, who have claimed that there already existed certain constructions, GDA issued notices under Section 27(1) and 28(1) of U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as "U.P. Act, 1973") alleging that constructions have been raised without any permission/approval by GDA and being unauthorised constructions should be removed by owners, failing which, penal action would be taken under Section 26 read with Section 14 of "U.P. Act, 1973". Notices issued to petitioners in leading writ petition have been filed as Annexure 3A to writ petition.

7. Before proceeding to consider rival submissions and our discussions in the matter, it would be appropriate to have, in brief, pleadings in concerned writ petitions so as to have advantage of factual aspects as available on record.

8. Leading Writ Petition no. 4986 of 2005 has come up at the instance of 6 petitioners, who claimed to be owners of plots numbers 256/2, 299, 381, 457/1; Khata no.358 and Khasara no. 450 situate in village Mohiuddinpur Kanawani, Pargana-Loni, Tehsil Dadri, District Gautambudh Nagar. All these plots have been mentioned in the notification dated 16th October, 2004, published under Section 4(1) of "Act 1894" and dated 28th November, 2005, published under Section 6(1) of said Act. Petitioners have also received notices dated 06.12.2004, issued

by GDA under Section 27(1) and 28(1) of "U.P. Act, 1973", stating that constructions existing over plots mentioned therein are unauthorised and illegal, having been raised without sanction of map by GDA, under Section 15 of U.P. Act, 1973, therefore, should be removed else the same shall be demolished. Petitioners responded to aforesaid notices vide replies dated 21st December, 2004, stating that constructions are 10 to 12 years old and old Abadi of village. Village Mohiuddinpur Kanawani, is part of Village Panchayat, "Bisrakh" and has been so declared as Panchayat under Article 243 E of Constitution of India. A separate Revenue District, Gautambudh Nagar was created vide notification dated 11.05.1997, whereupon jurisdiction of Ghaziabad District in respect of area notified under new Revenue District, Gautambudh Nagar ceased to be part of District Ghaziabad and officials of District Ghaziabad also ceased to have any jurisdiction over area which was brought within the jurisdiction of Gautambudh Nagar. Village Mohiuddinpur Kanawani is part of revenue area of District Gautambudh Nagar, as a result of creation of the said District. Respondent 2 i.e. Collector, Ghaziabad, had no authority or jurisdiction with respect to village Mohiuddinpur Kanawani, on and after 11th May, 1997. The said village ceased to be a part of "Development Area", under Section 3 of "U.P. Act, 1973".

9. GDA was constituted for "Planned Development" of Ghaziabad city, exercising jurisdiction over area declared as "development land" through Government notification dated 9th March, 1977, under Section 3 of "U.P. Act, 1973" only for District Ghaziabad, hence disputed plots of petitioners situate in village, Mohiuddinpur Kanawani, being part of District Gautambudh Nagar, cannot be developed by GDA. Disputed plots of petitioners over which residential houses are constructed, are old Abadi of village, having been declared "Abadi" under Section 143 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "U.P. Act, 1950"), by competent authority, hence stand regularised as residential constructions raised by petitioners over agricultural plots and cannot be termed unauthorised by GDA. District Gautambudh Nagar was disbanded by State, vide notification dated 30.01.2004, issued under Section 11(2) of U.P. Land Revenue Act, 1901 (hereinafter referred to as "U.P. Act, 1901"). The said notification was quashed by this Court vide judgment dated 21st May, 2004 in *Rajesh Kumar Sharma v. State of U.P. and others* [2004 (3) AWC 2234], as a result whereof, District Gautambudh Nagar continued and petitioners' village also continued to be part thereof. State of U.P. has not applied its mind while issuing notification under Section 4(1) of "Act, 1894" that village, Mohiuddinpur Kanawani, is not part of District Ghaziabad but is a part of Gautambudh Nagar, hence aforesaid notification to this extent is apparently illegal and bad. Power has been exercised under Section 17, so as to dispense with inquiry under Section 5A of "Act, 1894" without any material, without any application of mind and without forming opinion on the basis of any inquiry or material. Acquisition notifications have been issued mechanically without any relevant material and to curtail statutory rights of petitioners to file objections under Section 5(A) of Act, 1894.

10. Right to file objections under Section 5A is protected as a fundamental right guaranteed under Articles 14 and 19 of Constitution and same cannot be taken away under Section 17(4) of Act, 1894, without forming specific opinion based on relevant material on record about existing of urgency in interest of public at large. GDA has not deposited total amount of compensation to be awarded before declaration under Section 6(1), hence declaration under Section 6 of Act, 1894 is unsustainable in law. Collector has not tendered 80% compensation for the land of petitioners till the date of filing of petition as required under Section 17 (3A) of Act, 1894, hence Collector is not entitled to take possession of petitioners' land. State has not produced documents relevant to reports of concerned authorities regarding existence of urgency. State can not acquire land either for development or construction of residential houses when Abadi already exist at the site. GDA has no jurisdiction or authority to issue notices under Sections 27 and 28 of "U.P. Act, 1973" and such notices are illegal and void ab initio.

11. GDA has contested writ petition by filing a counter affidavit, sworn by Sri Manoj Kumar Mishra, Assistant Engineer. It is alleged that writ petition is premature, since it was filed challenging only notification under Section 4(1). Constructions raised by petitioners over plots in dispute without sanction of GDA are illegal. In respect to notices issued to petitioners under Section 27 and 28(1), they have alternative remedy of appeal before Chairman, GDA under Section 27 of U.P. Act, 1973. Constructions, as alleged, are not old but were started only in December, 2004. However, even if, the same is 12 years old, at that time also, GDA was there and hence, constructions raised without permission or sanction of map by GDA are illegal.

12. Factum that village, Mohiuddinpur Kanawani, is part of village Panchayat or not is irrelevant. Vide notification dated 29.01.1972, issued under Section 3(1) of U.P. (Regulation of Building Operations) Act, 1958 (hereinafter referred to as "U.P. Act, 1958"), certain areas were declared "Regulated Area". Notification included several villages which were part of Districts Meerut and Bulandshahr, besides entire area within Nagarpalika limit of District Ghaziabad. A copy of the notification is annexure-1 to Counter Affidavit. It shows that 118 villages of District Meerut, and 19, villages of District Bulandshahr were notified as "Regulated Area, Ghaziabad". The name of village, Mohiuddinpur Kanawani, is at serial no.47, since at that time it was part of District Meerut. Subsequently, GDA was created under U.P. Act, 1973 and State Government published notification dated 9th March, 1977 under Section 3 of the said Act, stating that entire area declared as "Regulated Area, Ghaziabad" vide notification dated 29.01.1972 shall be "Ghaziabad Development Area" under "U.P. Act, 1973", except the area which is a cantonment, in the ownership of Central Government, for the use of National Territorial Army and owned by Central Government or acquired or taken on lease.

13. It is said that "Ghaziabad Development Area" was entire area which was notified as "Regulated Area, Ghaziabad" vide notification dated 29.01.1972, and

therefore, village in dispute came to be notified within functional area of GDA. Once area is notified as "development area" for any development authority, the same would continue unless denotified or merged with another Development Authority. At the time of filing of counter affidavit, in March, 2005, GDA had operational area in some revenue villages of Districts Meerut, Bagpath and Bulandshahr. Mere creation of new district would make no difference to already notified "development area" of a Development Authority. It is not correct that GDA has also been created for only "Planned Development" of Ghaziabad city but it is for development of area notified under Section 3 of U.P. Act, 1973. It is also said that constructions raised by petitioners have been demolished after serving of notices upon them.

14. In Rejoinder Affidavit filed by petitioners in leading writ petition replying to the Counter Affidavit filed by GDA, it is said that after creation of Revenue District Gautambudh Nagar, State Government published a notification, under Section 3 read with Section 11 of U.P. Panchayat Raj Act, 1947 (hereinafter referred to as "U.P. Act, 1947"), as amended in 1994, and revenue village, Mohiuddinpur Kanawani, has been declared a Gram Panchayat, hence it ceased to be a "Development Area" under GDA. State Government, therefore, cannot acquire area for development by GDA. Petitioners have not received any demolition order and are still running a school named "Vande Matram Academy", established in the year 1992, on disputed plots. It is wrong to allege that constructions have been demolished. Notification under Section 3 of "U.P. Act, 1958" was issued when Ghaziabad was a Sub-division of District Meerut. After District Gautambudh Nagar came into existence, village, Mohiuddinpur Kanawani, is within jurisdiction of new district and having been constituted a separate village Panchayat, it stands exempted from jurisdiction of GDA. Notification under Section 3, issued on 9th March, 1977 ceased to apply to those areas which become part of a new District Gautambudh Nagar, after its creation in 1997 and also when a separate village Panchayat was created under U.P. Act, 1947. GDA was created for "Planned Development" of District Ghaziabad, hence it had jurisdiction only within limit of District Ghaziabad. Parliament has enacted National Capital Region Planning Board Act, 1985 (hereinafter referred to as "Act, 1985"). It comprises whole Union Territory of Delhi, some parts of State of Haryana, Uttar Pradesh and Rajasthan. It includes entire Districts Ghaziabad, Bulandshahr and Meerut. GDA, therefore, cannot acquire land for residential purpose in contravention of sub-regional and project plan, prepared by National Capital Region Planning Board (hereinafter referred to as "NCRPB") unless its permission is obtained under Section 29 of Act, 1985. Provisions of Act, 1985 have overriding effect over U.P. Act, 1973.

15. A Supplementary Rejoinder Affidavit has been filed appending therewith a notification dated 18th May, 1978 issued by State Government under Section 3 of U.P. Industrial Area Development Act, 1976 (hereinafter referred to as U.P. Act, 1976"), declaring "Industrial Development Area", constituting "New Okhala Industrial Development Area" (hereinafter referred to as "NOIDA"). The same

comprised of 14 villages of District Ghaziabad, including village, Mohiuddinpur Kanawani, area 917 acres. It is said that since village, Mohiuddinpur Kanawani, has now been notified as a part of "Industrial Development Area" under U.P. Act, 1976, hence the said village ceased to be within the jurisdiction of Development Area of GDA.

16. On behalf of respondent 1 also a separate Counter Affidavit has been filed, sworn by Sri Shiv Janam Chaudhary, Under Secretary, Housing and Urban Planning Department. It has also referred to notifications dated 29th January, 1972 issued under U.P. Act, 1958" and dated 9th March, 1977 issued under U.P. Act, 1973" and averred that village, Mohiuddinpur Kanawani, is part of "Development Area" placed within the jurisdiction of GDA. State Government is competent to declare an area to be a "Development Area" irrespective of whether it is part of a district or beyond that. A "Development Authority" under Section 4 is created for any Development Area and it is not with respect to any particular Revenue District, therefore, acquisition notification dated 16.10.2004, under Section 4(1) is valid, since the disputed village in question is within Development Area of GDA. It is said that District Gautambudh Nagar was abolished vide notification dated 13.01.2004, which was quashed by High Court vide judgment dated 21.05.2004 but due to inadvertent mistake into notification dated 16.10.2004, village in question was shown in District Ghaziabad, hence corrigendum was issued on 28.09.2005, wherein it was said that in place of "Ghaziabad", it shall be read as "Gautambudh Nagar". Aforesaid clerical mistake would not affect validity of acquisition notification.

17. Very strangely, however, we find that no specific reply has been given by State Government in respect of assertions made by petitioners about non-existence of urgency and arbitrary and illegal exercise of power under Section 17(1) and (4) for dispensing with inquiry under Section 5A of "Act, 1894". There is only a bare denial but no details have been given to show that there actually existed some urgency.

18. In Rejoinder Affidavit, petitioners have reiterated their averments as already discussed.

19. Then a Supplementary Counter Affidavit has been filed by GDA, stating that by notification dated 6th May, 1997, under Section 11 of U.P. Act, 1901 a new Revenue District, Gautambudh Nagar, was created comprising of 185 revenue villages of Tehsil Dadari, District Ghaziabad, 159 revenue villages of Tehsil Sikandarabad and 105 revenue villages of Tehsil Khurja, District Bulandshahr. The aforesaid notification dated 6th May, 1997 was modified vide notification dated 6th September, 1997 making certain changes of revenue villages, which were earlier notified so as to comprise "District Gautambudh Nagar". Thereafter, vide notification dated 13.01.2004 issued under Section 11(2) of U.P. Act, 1901, District Gautambudh Nagar was abolished by superseding notification dated 6th May, 1997 but a judgment of this Court, dated 21st May, 2004, quashed abolition notification dated 13.01.2004. Principal Secretary, Revenue issued an order

dated 25.06.2004 informing all the authorities that abolished districts are continuing since abolition notification has been quashed, and, shall function as they were already working. Consequently, proposal for acquisition of land for village, Mohiuddinpur Kanawani, was sent by GDA to District Magistrate, Gautambudh Nagar on 04.10.2002, after making necessary inquiry. Additional District Magistrate (Land Acquisition) [hereinafter referred to as "ADM(LA)"], Gautambudh Nagar, made recommendation to State Government whereupon notification dated 16.10.2004 under Section 4(1) of Act, 1894 was issued. Since therein District Ghaziabad was mentioned, ADM (LA), Gautambudh Nagar requested Government to issue a corrigendum vide letter dated 23.09.2005, which was issued correcting District "Ghaziabad" as District "Gautambudh Nagar". It is said that revenue village, Mohiuddinpur Kanawani, is part of "Development Area" of GDA, and therefore, GDA has rightly proceeded to acquire land thereat. It is also clarified that proposal for acquisition of land was received by District Magistrate, Gautambudh Nagar from GDA vide letter dated 04.10.2002 and matter was pending when District Gautambudh Nagar was abolished on 13.01.2004, as a result whereof, District Ghaziabad proceeded in the matter. After quashing of notification dated 13.01.2004, again District Magistrate, Gautambudh Nagar got jurisdiction but State Government's notification dated 16.10.2004 committed mistake by mentioning "District Ghaziabad". Since it was quite in vicinity to period when judgment was delivered by this Court and Revenue Secretary issued letter, hence, District Magistrate, Gautambudh Nagar requested for corrigendum and actually it was issued.

20. There is another Counter Affidavit filed on behalf of State of U.P. along with which an inspection report of joint survey, made by staff of GDA and Collector, Ghaziabad has been filed as Annexure CA 1. It gives details of construction, trees etc. existing on the land proposed to be acquired.

21. Petitioners have filed a Supplementary Affidavit sworn on 10th September, 2013 by Sri Deepak Singh, petitioner 4 stating that circle rates for village, Mohiuddinpur Kanawani, are being determined by Collector, Gautambudh Nagar which show that the said village is within District Gautambudh Nagar and not Ghaziabad. GDA has no authority to exercise development work thereat. It is also said that GDA has transferred substantial part of acquired land to private builders by way of auction.

22. GDA has replied the same by filing Supplementary Counter Affidavit sworn by Sri Anil Kumar Singh, Tehsildar, GDA, stating that revenue village, Mohiuddinpur Kanawani, is part of "Development Area" of GDA, though as a revenue village, it is part of District Gautambudh Nagar. That is why village Mohiuddinpur Kanawani has been notified in Ghaziabad Master Plan, 2012 under "U.P. Act, 1973".

23. In the rejoinder affidavit, petitioners have virtually reiterated whatever they have already said.

24. There is a Supplementary Counter Affidavit on behalf of respondent 1-State

giving following details:

(a). Notification under Section 4(1) Act, 1894 for acquiring 229.5390 acres of land was published in two daily newspapers "Dainik Jagran" and "Amar Ujala" on 22.10.2004 and a Public Munadi was made on 02.12.2004.

(b). Declaration under Section 6(1) of Act, 1894 was made vide notification dated 28.11.2005. It was published in Gazette (Extraordinary), of the same date, and in two newspapers "Dainik Jagran" and "Amar Ujala" on 01.12.2005. Public Munadi was also made in the locality on 01.12.2005.

(c). Notification under Section 9 of Act, 1894 was issued on 19.01.2006.

(d). Possession of 113.5918 acres of land was taken on 14.09.2006.

(e). Collector made award determining compensation on 21.04.2012.

(f). Land owners, who have not accepted/received compensation, the same has been deposited in court under Section 31 of "Act, 1894".

(g). Village Mohiuddinpur Kanawani was declared part of "Regulated Area, Ghaziabad" vide notification dated 29.01.1972. Thereafter it became part of "Development Area" of Ghaziabad.

(h). The said village admittedly is revenue village of District Gautambudh Nagar but still part of "Development Area" of GDA.

25. Petitioners, in rejoinder affidavit filed in reply to the aforesaid Supplementary Counter Affidavit of respondent 1, have said that State has not taken actual possession of land owned by petitioners.

26. There is a Second Supplementary Affidavit filed by petitioners, wherein it is said that GDA had deposited Rs. 2,54,97,000/- on 13.05.2003 and again similar amount i.e. Rs. 2,54,97,000/- on 01.07.2003 with ADM(LA), Gautambudh Nagar. Collector, Gautambudh Nagar issued letter to Directorate, Land Acquisition/ Board of Revenue on 11.12.2003 recommending issue of acquisition notification under Section 4(1)/17(1) of "Act 1894". No recommendation was made by Collector for invoking urgency clause under Section 17(1) and (4) and without such report, Government invoked aforesaid provisions and dispensed with inquiry under Section 5A. A fake document has been filed by Government in Counter Affidavit in Writ Petition No. 46055 of 2011, and therein, some justification for urgency has been mentioned but said document neither contains any Date nor Village, Pargana, Tehsil and District nor even signature of Collector, hence aforesaid document has no legal sanctity and consequence at all. Munadi was made under order of ADM(LA), Ghaziabad dated 30.11.2004. One Ram Narayan was authorised for Munadi by beating of drum in village on 02.12.2004 for which he received Rs.2500/- in cash. It is said that such Munadi is illegal, inasmuch as, no cash payment is permissible under Rules. Declaration under Section 6(1) has been issued on 28.11.2005 i.e. after expiry of one year from the date of notification under Section 4(1), hence it is barred by time. Notification under

Section 4(1) was published in Gazette (Extraordinary) on 16.10.2004 and in newspapers on 22.10.2004 while declaration under Section 6(1) was published on 28.11.2005 i.e. after one year.

27. In reply to aforesaid Supplementary Affidavit, GDA has filed Second Supplementary Counter Affidavit admitting that 10% expenditure towards acquisition and 10% towards advance compensation was deposited by GDA. Document filed as SSA-3 justifying urgency was report of GDA and agreeing therewith, Collector, Gautambudh Nagar recommended for acquisition, hence it was not necessary to repeat same thing in Collector's letter. After notification dated 16.10.2004, a corrigendum was issued on 07.01.2005 and another corrigendum was issued on 28.09.2005 and declaration was made on 28.11.2005, hence there is no violation of Section 6 with respect to period. It is also said that Munadi of preliminary notification was done on 02.12.2004. Petitioner-1, Hatam Singh has executed sale deed of plot nos.298, 299, 306 and 307 in favour of M/s. Sparsh Wildwel Pvt. Ltd., Nayaganj, Kanpur and in revenue record mutation has taken place on 17.07.2009, pursuant to Tehsildar's order dated 10.12.2007. Similarly, petitioner-3, Khajan Singh has executed sale deed to one Surendra Mohan Chopra and Kiran Chopra, wife of Surendra Mohan Chopra and their names have been entered into revenue record on 02.07.2010 and 15.07.2010 pursuant to Tehsildar orders dated 13.06.2010 and 23.12.2010.

28. Similarly, a Second Supplementary Counter Affidavit has been filed by respondent 1 stating that Collector, Gautambudh Nagar satisfied with proposal of GDA, sent a letter dated 11.12.2003 to Directorate of Land Acquisition/ Board of Revenue for proceeding with acquisition along with proposal. Reasons for invocation of urgency provisions were also communicated and it was part of proposal. District Magistrate, Gautambudh Nagar, since has given consent to the entire proposal of GDA, it would not be proper to disconnect reasons contained in report of GDA which was part of record and was accepted by Collector and forwarded to Directorate, Land Acquisition. Report was part of proposal and hence facts were not repeated separately.

29. In Supplementary Rejoinder Affidavit, petitioners have reiterated facts which were already stated.

30. A third Supplementary Affidavit dated 11.04.2012 has been filed stating that neither possession of petitioners' land has been taken nor award has been made, therefore, acquisition proceedings in respect thereto have lapsed by virtue of Section 11E. It is also said that respondents are acting arbitrarily, inasmuch as, some land, acquired by impugned notifications, has been denotified/regularised/exempted in favour of some private colonizers, namely "Jai Prakash Housing Corporation" and "Indrason City Vikas Samit". Some land has been auctioned in his favour of "M/s. Gaur Builders" for construction of Residential Group Housing which shows that acquisition is for the benefit of private builders.

31. There are some additional pleadings in other writ petitions also which we

propose to refer/ discuss later on whenever occasion will arise.

32. Acquisition notifications under Sections 4 and 6 have been challenged basically on the ground that village Mohiuddinpur Kanawani is part of District Gautambudh Nagar, which was created vide notification dated 11.05.1997, under Section 11(2) U.P. Act, 1901, therefore, District Authorities at Ghaziabad as also GDA would have no jurisdiction to acquire land which is part and parcel of District Gautambudh Nagar; there is no material or justification to dispense with inquiry under Section 5A, and to this extent, impugned notifications invoking under Section 17(1) and (4) and dispensing inquiry under Section 5A of "Act 1894" are illegal; there is no compliance of publication of notifications in two newspapers and also publicity in locality which is a mandatory requirement; declaration was made under Section 6 beyond one year, hence barred by limitation; disputed acquired land is part of area declared as "National Capital Region" and unless permission/approval is obtained from "NCRPB" under the provisions of Act, 1985, any development and acquisition of land for development is invalid and illegal; the land, though claimed to have been acquired for "Planned Development" by GDA, but immediately after taking possession, it has been transferred to private builders, showing that acquisition in question is for the benefit of private/individual builders and this is a colourable exercise of power in the garb of public interest, therefore, vitiated in law; the village in question is part of village Panchayat "Bisarakh" declared under Article 243 B read with 243 C, therefore, could not have been acquired by GDA as GDA has no power to interfere with area which is to be developed by local Panchayat.

33. The arguments have been mainly advanced by Sri Manish Goel which have been adopted by other counsels namely Sri W.H. Khan, Senior Advocate assisted by Sri G.H. Khan, Advocate Sri B.B. Singh, Sri J.N. Sharma, Sri Pankaj Dubey and Sri G.K. Singh. Besides, some learned counsels have also buttressed their contentions by referring to various authorities which we shall refer and deal with while discussing matter on respective issues.

34. Sri C.B. Yadav, Additional Advocate General assisted by Sri Shankar Shekhar Singh, and Sri Mahendra Pratap, Advocates have advanced submissions on behalf of respondents and GDA respectively. They have contested all the aforesaid issues and argued that area of operation of GDA is not confined to a district but to the area notified under Act, 1973 and village, Mohiuddinpur Kanwani, is included therein, hence, there is no illegality in exercise of power of acquisition by District Administration, Gautambudh Nagar at the instance of GDA. It is further contended that demand of residential accommodation was very heavy and looking to urgent need, inquiry under Section 5A was dispensed with. Other aspects have also been denied by them and it is said that there is substantial compliance of standards, therefore, there is no justification to interfere with the impugned acquisition notification and writ petition deserves to be dismissed.

35. The first issue relates to validity of acquisition of land at village Mohiuddinpur Kanawani at the instance of GDA. This question would be examined by

considering the matter on following three angles:

(a) Whether village Mohiuddinpur Kanawani part of Revenue District Gautambudh Nagar could have been acquired by GDA ?

(b) Whether revenue village Mohiuddinpur Kanawani continued to be part of "Development Area" of GDA so as to authorise GDA to proceed for acquisition of land therein irrespective of fact as to under which Revenue District it falls ?

(c) Whether the factum that revenue village, Mohiuddinpur Kanawani, was declared a village panchayat under U.P. Act, 1947, would make any difference or would have any legal consequence in acquisition proceedings initiated by GDA in respect of the same ?

36. We proceed to consider all the aforesaid three issues together.

37. After independence and declaration of Delhi as National Capital, construction activities started at great pace at Delhi and areas in its vicinity which were part of adjacent States. Finding tendency of people to go for haphazard building constructions in growing colonization and township, causing difficulty in providing facilities of drainage, water supply public sanitation etc., Government of India felt it necessary to regulate such activities, hence promulgated Delhi (Regulations of Buildings Operation) Act, 1955. Ghaziabad was an adjoining city to Delhi and there also construction activities had started in haphazard manner. This was also being followed in some other bigger cities, like Kanpur, Agra etc. The U.P. State legislature thus proceeded to enact "U.P. Act, 1958". It was enacted to provide for regulation of buildings operations with a view to prevent haphazard development in urban and rural areas. U.P. Act, 1958 received Presidential assent on 8th October, 1958 and published in U.P. Gazette (Extraordinary) dated 16.10.1958. It came into force then on.

38. "Regulated Area" was defined under Section 2(d) as an area in respect to which a declaration under sub-section 1 of Section 3, is, for the time being in force.

39. Section 3 of "U.P. Act, 1958" as amended in 1963 and 1976, reads as under:

"3(1) If in the opinion of the State Government any area within U.P. requires to be regulated under this Act with a view to the prevention of bad laying out of land, haphazard erection of buildings or growth of sub-standard colonies or with a view to the development and expansion of that area according to proper planning, it may, by notification in the Official Gazette, declare the area to be regulated area.

(2) The operation of Chapter XIII of the Uttar Pradesh, Nagar Mahapalika Adhiniyam 1959, [Sections 178, 179, 180, 180-A. 181, 182, 183, 184, 185, 186, 203, 204, 205, 206, 207, 208, 209, 210 and 222 of the United Provinces Municipalities Act, 1916] (or the said sections as extended under Section 338 thereof or under Section 38 of the U.P. Town Areas Act, 1914), Sections 29, 30

and 32 of the U.P. Town Improvement Act, 1919, or, as the case may be of Sections 162 to 171 of the Uttar Pradesh Kshettra Samities and Zila Parishads Adhiniyam, 1961, shall in respect of a regulated area remain suspended for the, period during which the declaration relating to it under Sub-section (1) remains in force, and the provisions of Section 6 of the U.P. General Clauses Act, 1904, shall apply in relation to such suspension as if the suspension amounted to repeal of the said enactments by this Act]".

40. A perusal of various provisions of U.P. Act, 1958 shows that a "Regulated Area" declared under Section 3 need not be confined to a Tehsil or Sub-division or one local body or a district but it could have been beyond that. Section 17 of U.P. Act, 1958 gave overriding effect to its provisions over any other law containing inconsistent provisions in force at the time of commencement of the U.P. Act, 1958.

41. In 1972, Ghaziabad was a part of Sub-division/ Tehsil of District Meerut. Since it was near National Capital, New Delhi, there was huge influx of people causing rapid constructions of residential, commercial and industrial buildings. However, in absence of provision for "Planned Development", those activities went on in a haphazard, irregular and unregulated manner. State Government in order to regulate such activities issued a notification dated 29.01.1972 declaring "Regulated Area, Ghaziabad" which comprised of entire territorial limit of local body i.e. Nagarpalika Ghaziabad, 118 villages of District Meerut which were outside territorial limit of Nagarpalika, Ghaziabad and 19 villages of District Bulendshahr. This entire area as a whole was constituted and termed as "Regulated Area, Ghaziabad" under Section 3 of U.P. Act, 1958. Village Mohiuddinpur Kanawani, which fell in Block Loni, District Meerut, was mentioned at serial 47 in the aforesaid notification dated 29.01.1972 and thus it became part of "Regulated Area Ghaziabad" with effect from 29.01.1972.

42. Then comes the enactment of U.P. Act, 1973. The reasons given for aforesaid enactment in the preparatory note of Bill are that in the developing areas of State of U.P., problem of town planning and urban development need to be tackled resolutely. Existing local bodies and other authorities, in spite of their best efforts, were not able to cope up with problem to the extent to bring about improvement in the situation. Government found it expedient that in such developing areas, "Development Authorities" on the pattern of "Delhi Development Authority", be established.

43. The term "development area" and "Development Authority" are defined under Sections 2(f) and (g) of U.P. Act, 1973, read as under;

"(f) "development area" means any area declared to be a development area under Section 3;

(g) "the Development Authority" or "the Authority", in relation to any development area, means the Development Authority constituted under Section 4 for that area;"

44. Section 3 authorises State Government to make declaration by notification in an area to be a "development area" and also constitutes a "Development Authority" for any development area under Section 4.

45. Section 59 of U.P Act, 1973 provides for suspension of various statutes or certain provisions thereof in respect of "development area" and that would be governed by provisions of "U.P. Act, 1973".

46. State Government published a notification under Section 3 of U.P. Act, 1973 on 9th March, 1977, declaring entire area notified as "Regulated Area, Ghaziabad" vide notification dated 29.01.1972, as Ghaziabad Development Area excluding cantonment area or any area for the purpose of Naval, Army or Air Force owned by Central Government or acquired or taken on lease by it. The notification dated 9.3.1977 described "Ghaziabad Development Area" to constitute as under:

mRrj izns"k (fuekZ.k & dk;Z fofu;eu) vf/kfu;e] 1958 (mRrj izns"k vf/kfu;e la[;k 34] 1958) dh /kkjk 3 ds v/khu ljdkjh vf/klwpuk la[;k 1447@37&03&21(6)&63@67] fnukad 29 tuojh] 1972 ds vUrxZr vf/klwfpf fofu;ksftr {ks=} xkft;kckn] esa lEEefyr {ks=} ftlesa dSUVwuesUV {ks= vkSj ukfod] lSfud ;k ok;qlsuk ds fdlh izkf/kdkjh ds iz;kstukFkZ dsUnzh; ljdkj ds LokfeRo esa ;k mlds }kjk vf/kx` ghr ;k iV~Vs ij yh xbZ Hkwfe lEEefyr ugha gSA

"The Regulated Area, Ghaziabad notified vide Government Notification No. 1447/37-3-21 (6)-63/67, dated 29th January 1972 under Section 3 of The U.P. (Regulations of Building Operations) Act, 1958 (U.P. Act XXXIV of 1958), not including cantonment area and any land owned, acquired or taken on lease by the Union Government for the purpose of any authority of the Navy, the Military or the Air Force."

(English translation by Court)

47. Thus, with effect from 9th March, 1977, when notification under Section 3 of U.P. Act, 1973 was issued, entire "Regulated Area, Ghaziabad" became "Ghaziabad Development Area". The provisions of U.P. Act, 1958 stood suspended in respect of "Ghaziabad Development Area" on and after 9th March 1977. It is very clear that Village Mohiuddinpur Kanawani which continued to be "Regulated Area Ghaziabad" up to 09.03.1977 became part of "Ghaziabad Development Area" on 09.03.1977 and thereafter had to be governed by the provisions of U.P. Act, 1973. GDA was constituted by notification dated 9th March, 1977 for undertaking development in "Ghaziabad Development Area" notified under Section 3 by notification dated 9th March, 1977, meaning thereby village Mohiuddinpur Kanawani came within the functional territorial jurisdiction of GDA by virtue of notification dated 9th March, 1977 issued under Section 3 of U.P. Act, 1973.

48. The next statutory enactment is U.P. Act, 1976. It was enacted for the constitution of an Authority for development of certain areas in the State into

Industrial and Urban Township and for matters connected therewith. Section 3 provides for constitution of such "Industrial Area Development Authority" by State Government. Through a notification dated 18.05.1978 in exercise of power under Section 2(d) read with Section 3 of U.P. Act, 1973 about 14 villages with specified area of Tehsil Dadari, District Ghaziabad along with others were declared to constitute "Industrial Development Area" as NOIDA. It reads as under:

"No.342 HI/XVIII-11

In exercise of the powers under clause (d) of Section 2 read with section 3 of the Uttar Pradesh Industrial Area Development Act, 1976 (U.P. Act no.6 of 1976), the Governor is hereby pleased to declare that the area comprising the villages mentioned hereunder shall be an industrial development area" constituting the "New Okhla Industrial Development Area"

District

Tehsil

SI. No.

Village

Area (in acres)

Ghaziabad

Dadri

1.

Hoshiarpur

561-00

2.

Asgapur Jagir

737-00

3.

Besai Bariuddin Nagar

408-00

4.

Shahpur Goverdhanpur Khadar

393-00

5.

Chhalera Khadar

873-00

6.

Chaksalarpur

256-00

7.

Rasulpur Nawada

575-00

8.

Hasanpur Bhogpur

581-00

9.

Makanpur

2929-00

10.

Hajratpur Wajidpur

213-00

11.

Moiuddinpur Kanawali

917-00

12.

Chhajarasi

772-00

13.

Khonda

1054-00

14.

Lalpur

144-00

49. The said notification included village Mohiuddinpur Kanawani, area 917 acres

as part of NOIDA. Section 17 of U.P. Act, 1976 gives overriding effect to the provisions of said act over "U.P. Act, 1973" and reads as under;

"17. Overriding effect of the Act.- Upon any area being declared an industrial development area under the provisions of this Act, such area, if included in the master plan or the zonal development plan under the Uttar Pradesh Urban Planning and Development Act, 1973, or any other development plan under any other Uttar Pradesh Act, with effect from the date of such declaration be deemed to be excluded from any such plan".

50. Thus, as a result of declaration of NOIDA vide notification dated 18th May, 1978 which included village, Mohiuddinpur Kanawani, the same stood excluded from "Ghaziabad Development Area" which was under GDA. To this extent, we have no hesitation in making such observation and if this position would have continued, what was argued on behalf of petitioners that GDA had no authority to acquire land for development in village, Mohiuddinpur Kanawani, should have been upheld but in view of subsequent events, we find that things had gone material change which went to the root of the matter.

51. Another notification was issued on 11th July, 1989 under Section 21 of U.P. General Clause Act read with Section 2(d) of U.P. Act, 1976, superseding earlier notifications issued under U.P. Act, 1976 that is 17th April, 1976, 18th May, 1978 and 26th September, 1978. The Government declared another list of villages of Tehsil Dadri, District Ghaziabad which would form "Industrial Development Area" and part of NOIDA. This notification covered 53 villages but village, Mohiuddinpur Kanawani, was not mentioned therein. It may be noted that 45 villages mentioned in the notification dated 11th July, 1989 whose area mentioned in column 5 in general were included and remaining 8 villages in notification mentioned specific khasra number and area separately. We need not go in detail of all the villages mentioned therein and suffice for us to notice and reiterate that "village Mohiuddinpur Kanawani" was not mentioned. Hence, it stood not included in "Industrial Development Area of NOIDA". Since notification dated 11.07.1989 superseded, along with others, notification dated 18th May, 1978 also, therefore, reliance placed on notification dated 18th May, 1978 is thoroughly misconceived and has to be rejected.

52. The effect and consequence of notification dated 11th July, 1989 is that only such villages and areas as were mentioned in the said notification, constituted part and parcel of NOIDA which were to be governed by U.P. Act, 1976. Rest of villages of District Ghaziabad or others were to be governed by respective provisions and notifications issued under different statutes. It restores the status of GDA in respect of village Mohiuddinpur Kanawani as a part of "Development Area of GDA".

53. Moreover, notification issued under Section 3 of U.P. Act, 1973 bringing village Mohiuddinpur Kanawani within "Development Area of Ghaziabad" has never been revoked and cancelled. In fact, after notification dated 18th May,

1978, under Sections 2(d) and 3 of U.P. Act, 1976, by virtue of Section 17, village Mohiuddinpur Kanawani was deemed to have been excluded from the application of U.P. Act, 1973 but when notification dated 18th May, 1978 stood superseded by notification dated 11.07.1989, and village Mohiuddinpur Kanawani was not included therein as part of NOIDA, the deeming provision under Section 17 disappeared, restoring earlier position that is reviving notification dated 9th March, 1977 issued under Section 3 of U.P. Act, 1973 and village, Mohiuddinpur Kanawani, continued to be a part of "Ghaziabad Development Area" to be developed by GDA. Thus, we are clearly of the view that after issue of notification dated 11th July, 1989, village Mohiuddinpur Kanawani continued to be within territorial jurisdiction of GDA being part of "Ghaziabad Development Area" by virtue of notification dated 9th March, 1977 which was never revoked or cancelled and restored its efficacy on and after notification dated 11th July, 1989.

54. Now comes to be seen what is effect of creation of Revenue District, Gautambudh Nagar, and declaration of village, Mohiuddinpur Kanawani, as Gram Panchayat. First we consider the effect and consequence of creation of new District Gautambudh Nagar and village Mohiuddinpur Kanawani becoming part of new District, that is separated from district Ghaziabad.

55. Under U.P. Act, 1901 power to create, alter and abolish divisions, districts, tehsil and sub-divisions is vested in State Government, which reads as follows:

"11. Power to create, alter and abolish divisions, districts, tahsil and sub-divisions.- (1) The State Government may create new or abolish existing divisions or districts.

(2) The State Government may alter the limits of any division, district, or tahsil, and may create new or abolish existing tahsil, and may divide any district into sub-divisions, and may alter the limits of sub-divisions.

(3) Subject to the orders of the State Government under sub-section (2), all tahsils shall be deemed to be sub-divisions of districts."

56. State Government in exercise of aforesaid power, by issuing notification dated 11th May, 1997 created a new Revenue District, Gautambudh Nagar, carving out certain areas from District Ghaziabad, District Meerut and District Bulandshahr. Village Mohiuddinpur Kanawani also became a revenue village under Revenue District Gautambudh Nagar in view of aforesaid notification issued Section 11 of U.P. Act, 1901. The aforesaid notification, in our view, did not affect the area of operation and function of GDA comprising those villages which were notified under notification dated 9th March, 1977, under Section 3 of U.P. Act, 1973 declaring the same to be Ghaziabad Development Area, inasmuch as, a "development area" has not been shown so as to confine to a particular city/district etc. A "Development Area" under Section 3 of U.P. Act, 1973 may comprise of one city, more than one city, one local body, more than one local body and may also extend to areas, falling in different districts. It is evident from

the notification dated 9th March, 1977, when Ghaziabad Development Area was constituted, it included villages which were within two different districts, namely, Meerut and Bulandshahr, besides the municipal city limit of Ghaziabad. Therefore, it was extended beyond Ghaziabad city at initial stage and that situation continued thereafter irrespective of creation of a new Revenue District. Creation of Revenue District is for different purpose and has nothing to do with functioning of a "development area" under U.P. Act, 1973. Since aforesaid Act clearly shows that a "Development Authority" may be constituted irrespective of whether an area declared as "development area" falls in one city, one district or beyond that, therefore, any change in structure of Revenue District under U.P. Act, 1901 would have no effect and consequence on the "development area" governed by notification issued under Section 3 of U.P. Act, 1973. In our view, creation of Revenue District Gautambudh Nagar and bringing village Mohiuddinpur Kanawani within the revenue jurisdiction of Gautambudh Nagar would make no difference and village Mohiuddinpur Kanawani, as it was already declared separately as a part of "Ghaziabad Development Area, would continue to have retained the same status so far as GDA is concerned.

57. Now comes the last submission about declaration of village Mohiuddinpur Kanawani as Gram Panchayat. Such a declaration is made under provisions of U.P. Panchayat Raj Act, 1947 (hereinafter referred to as U.P. Act, 1947). Such declaration is for the purpose of governance of Gram Panchayat in general by the provisions of U.P. Act, 1947, but there is nothing on record or contained in the said statute to show, if certain land or the entire area of a Gram Panchayat is declared as a part of a "development area" in a notification under Section 3 of U.P. Act, 1973, it will be bad or would infringe U.P. Act, 1947 or that U.P. Act, 1947 would override U.P. Act, 1973. We have not been pointed out any provision under U.P. Act, 1947 which may show, if an area of Gram Panchayat is notified to be a part of "development area" of Development Authority under U.P. Act, 1973, it would be inconsistent and in the teeth of functioning of Gram Panchayat under U.P. Act, 1947. The aforesaid submission, therefore, is also rejected.

58. The three questions (a), (b) and (c) noticed above with respect to correctness of proceedings initiated at the instance of GDA for acquisition of land in village, Mohiuddinpur Kanawani, are answered against the petitioners and in favour of respondents.

59. Now we come to other substantial issues with regard to validity of impugned acquisition notifications, i.e.:

(i) Whether dispensation of inquiry under Section 5A of Act, 1894 is illegal, arbitrary and founded on no material to show existence of actual urgency?

(ii) Whether permission or sanction of NCRPB is mandatory. If so, whether respondents have complied with the said requirement?

(iii) Whether the notification under section 6 is barred by time having been published beyond one year from the date of preliminary notification under

Section 4?

(iv) Whether acquisition for "Planned Development" i.e. for construction of residential colonies, at the instance of GDA, is a colourable exercise of power, since acquired land mostly is being handed over and transferred to private builders?

Issue-I : Regarding dispensation of inquiry under Section 5A of Act, 1894.

60. As already noticed, nothing substantial has been stated by the respondents in counter affidavit and supplementary counter affidavit etc. to demonstrate existence of actual urgency justifying dispensation of inquiry under Section 5A. However, original record pertaining to acquisition in question has also been placed before us. We have examined the same and it discloses following facts:

(a) GDA vide resolution dated 29.06.2001, resolved to acquire 400 acres of land at village, Mohiuddinpur Kanawani, and constituted a Committee to select appropriate land. Meeting of Committee was held for the first time on 7th January, 2002. "Site Selection Committee" visited village Mohiuddinpur Kanawani on 10.01.2002. It found that land selected by it, besides individual tenure holders, was also registered in the name of Societies, Farm Houses; some land belong to Gram Samaj and some part of land on which constructions existed was, where, maps were already sanctioned but for non deposit of development fee, sanctions granted stood lapsed. Details of selected land as mentioned by Site Selection Committee in its report, read as under :

1-

dk"rdkjksa dh Hkwfe%&

327&12&4&17 ch?kk

2-

og Hkwfe ftl ij lfefr;ksa ds uke ntZ gS

97&19&12&0 ch?kk

3-

og Hkwfe ftl ij QkeZ gkml ntZ gS%&

49&3&12&0 ch?kk

4-

xzke lekt dh Hkwfe%&

32&18&12&18 ch?kk

5-

ekufp= vLohd`r gksus ds mijkar lwfp esa lfEefyr Hkwfe%&

96&7&5&10 ch?kk

604&7&14&6 ch?kk

1.

Land of the cultivators

327-12-4-17 Bigha

2.

Land registered in the name of Societies

397-19-12-0 Bigha

3.

Land registered in the name of Farm House

49-3-19-0 Bigha

4.

Land of Gram Samaj

32-18-12-18 Bigha

5.

Land included in the list after disapproval of the map

96-7-5-10 Bigha

604-7-14-6 Bigha

(English translation by Court)

(b) Site Selection Committee also mentioned in its report that proposed land, as per "Master Plan, 2001", was a recreation site, and therefore, conversion of land use as residential would also be necessary.

(c) Report was considered by GDA in its meeting dated 07.06.2002 and it resolved to proceed to acquire land belong to Individual Tenure Holders, Societies, Gram Samaj and Farm Houses.

(d) GDA sent a letter dated 14.01.2003 to Collector, Ghaziabad.

(e) GDA submitted application dated 17th May, 2003, requesting Collector to proceed for acquisition of 229. 3828 acres of land in village Mohiuddinpur Kanawani; regarding possession, whether immediately required or not, it mentioned in said application as under:

" Immediately. Because this scheme is to be completed for public interest and for "planned development" of the city."

(f) GDA also deposited Rs. 2,54,97,000/- vide Cheque no. 951945 dated 01.07.2003, payable at Vijay Bank, Ghaziabad, in Treasury, vide receipt dated 11th July, 2003.

(g) ADM(LA) vide letter dated 28.08.2003 enquired from Ceiling Authority whether proposed land is within the ambit of Ceiling Act or not. A clearance certificate was issued by Competent Authority in the office of Collector, Gautambudh Nagar, on 08.12.2003.

(h) On the directions of Collector, Tahshildar Dadri, Gautambudh Nagar also submitted report on 10.12.2003.

(i) Collector, Gautambudh Nagar also issued "No Objection Certificate" and for recommending dispensation of inquiry under Section 5A by exercising power under Section 17, mentioned following reason:

"xkft;kckn fodkl izkf/kdj.k dh ;g ,d vR;Ur egRoiw.kZ ;kstuk gS ftlesa Hkwfe dh rRdky vko";drk gS ifj;kstuk o {ks= ds lqfu;ksftr fodkl ds egRo dks n`f"Vxr j[krs gq, bl Hkw&vtZu izdj.k esa vtZu dh dk;Zokgh Hkwfe vtZu vf/kfu;e dh /kkjk 4 o 6 ds lkFk ifBr /kkjk 17 ds vUrxZr djus gsrq laLrqfr dh tkrh gSA"

"This is a very important scheme of the Ghaziabad Development Authority, in which the land is required urgently. Keeping in view the project and the importance of planned development of the area, proceedings for acquisition of land, in this land acquisition case, are recommended to be taken u/s 4 and 6 of Land Acquisition Act read with Section 17."

(English translation by Court)

(j) Requisite certificate under paragraph 14 schedule 2 of Land Acquisition Manual, 1988 was issued by ADM(LA) and Collector Ghaziabad on 16th March, 2004.

(k) Proposal for acquisition of land was submitted by Collector, Ghaziabad vide letter dated 27th May, 2004 to Director, Land Acquisition, Lucknow (hereinafter referred to as "DLA").

(l) There were certain errors which "DLA" got rectified and thereafter vide letter dated 26.06.2004, it requested Government i.e. Secretary, Housing and Urban Planning, Lucknow to proceed for issue of notification under Sections 4(1) and 17 of Act, 1894.

(m) Notification under Sections 4(1)/17 was published in the Gazette (Extraordinary) dated 16.10.2004.

(n) Noting on File No.14782/PSMM/05 of State Government starts with page 1 containing a note dated 25.06.2004/30.06.2004 which is in reference to DLA's letter dated 26.06.2004 and justification mentioned in the said note for dispensation of inquiry under Section 5A is contained in paragraph 13 of the said note which reads as under:

"13- izLrkfor Hkwfe dk vtZu dh ;kstuk esa foyEc gksus ij vuf/kd`r fuekZ.k dh laHkkouk gSA iz"uxr ;kstuk tufgr dh gSA vr% vtZu gsrq Hkwfe v;/kfIr 1894 dh /kkjk&4 o 6 dh foKfIr tkjh djkus ds fy, /kkjk&17 ds izkfo/kku ykxw fd;k tkuk vko";d gSA"

"13. There is likelihood of construction of unauthorised constructions in case of delay in acquisition of the proposed land. The scheme in question is for public welfare. Hence, in order to get notification for acquisition of land, issued, u/s 4 and 6 of the Land Acquisition Act, 1894, it is necessary to invoke provisions of Section 17."

(English translation by Court)

(o) In the aforesaid notification, Revenue District was mentioned as Ghaziabad. Total land proposed to be acquired mentioned in the aforesaid notification was 367-0-5 bigha (229.3828) acres.

(p) Subsequently, it came to notice that certain Khasra numbers and area of land were wrongly mentioned in preliminary acquisition notification, hence a corrigendum was issued on 05.01.2005, published in the Gazette (Extraordinary) dated 05.01.2005 making following corrigendum:

- 1- [kljk la];k 352 ,e0 esa vftZr {ks=Qy 2&19&0 ds LFkku ij 2&19&10 i<+k tk,A
- 2- [kljk la];k 406 ,e0 esa vftZr {ks=Qy 3&5&18 ds LFkku ij 3&5&16 i<+k tk,A
- 3- [kljk la];k 522 esa vftZr {ks=Qy 1&14&0 ds LFkku ij 0&14&0 i<+k tk,A
- 4- [kljk la];k 153 esa vftZr {ks=Qy 0&9&0 ds LFkku ij 0&14&0 i<+k tk,A
- 5- dqy ;ksx 229-3828 ,dM+ ds LFkku ij 229-5390 ,dM+ i<+k tk,A

1. 2-19-10 be read in place of the acquired area 2-19-0 in Khasra No. 352 M.
2. 3-5-16 be read in place of the acquired area 3-5-18 in Khasra No. 406 M.
3. 0-14-0 be read in place of the acquired area 1-14-0 in Khasra No. 552 M.
4. 0-14-0 be read in place of the acquired area 0-9-0 in Khasra No. 153 M.
5. 229.5390 acres be read in place of grand total of 229.3828 acres.

(English translation by Court)

(q) It was also published in two daily newspapers "Amar Ujala" and "Dainik Jagran" on 22nd October, 2004.

(r) ADM(LA) sent a letter dated 23rd September, 2005 requesting Government to issue another corrigendum so as to mention District "Gautambudh Nagar" instead of "Ghaziabad" in the notification dated 16.10.2004.

(s) Consequential corrigendum notification was issued on 28th September, 2005.

(t) Notification under Section 6(1) was published in the Gazette (Extraordinary)

dated 28th November, 2005.

61. We may also place on record to find out a kind of fraud and misrepresentation played by GDA with Court by filing a second supplementary counter affidavit dated 06.04.2016, sworn by Sri Rajendra Tayagi, Legal Assistant, GDA, stating that documents and communication amongst GDA, Collector and State Government relating to acquisition proceedings are collectively being filed as Annexure SCA-1. When we perused the aforesaid documents, we find that the same pertains to acquisition of land in village Sadarpur, Pargana-Dasana, Tahsil and District Ghaziabad and has nothing to do with acquisition in question which relates to village Mohiddinpur Kanawani. A bulky documents, running in about 70 pages (photostat), have been filed collectively as SCA-1 which consumed our sufficient time in going through documents but we find the same are wholly irrelevant for the purpose of present writ petitions, since these documents filed by GDA along with second supplementary counter affidavit pertains to some others village and have no connection and relation with acquisition in question.

62. Above facts show that deliberation and requirement of acquisition of land in dispute at village, Mohiuddinpur Kanawani, commenced as long back as on 29.06.2001 and ultimately declaration under Section 6 was published on 28th November, 2005. Even between preliminary notification under Section 4 and declaration under Section 6, there is difference of more than an year. When process of acquisition could conveniently take four years and more, we find it difficult to hold that it was a case where there existed a genuine and bona fide urgency justifying exercise of power under Sections 17(1) and (4) so as to dispense with inquiry under Section 5 of Act, 1894. In taking the aforesaid view, we are heavily supported by a catena of decisions on this subject, some of which may fruitfully be referred hereinafter:

63. Section 5-A was inserted in Act, 1894 as long back as in 1923, by Act No. 38 of 1923. There are minor amendments made subsequently but substance of provision has remained the same.

64. Normal procedure of acquisition is that a proposal of acquisition is published in notification under Section 4 of Act, 1894. Land owners whose land is proposed to be acquired, are given an opportunity to make their objections. Collector is under an obligation to consider objections and also offer an opportunity of hearing to objectors and thereafter submit a report to Government containing his recommendations on the objections, for decision of Government. After considering the report and other material, Government makes declaration that land is proposed to be acquired for public purpose and this is done by publication of notification under Section 6. Therefore, there is possibility of some difference in details of land stated in the notification issued under Section 4 and finally declared land, as acquired for public purpose, detailed in notification under Section 6.

65. Collector is then authorised to take order for acquisition and under Section 8 is supposed to mark, measure and plan the acquired land. A notice thereafter is issued under Section 9 to Land Owners by Collector, notifying his intention of taking possession of land and that the claim for compensation be submitted to him. Under Section 11, Collector makes enquiry for determining amount of compensation payable to land owners, whose land has been acquired, and make award. After payment of compensation, Collector takes possession of land.

66. There is an exception to normal procedure of taking possession which is contained in Section 17 of Act 1894. It says that in case of urgency, even though no award has been made, Government can direct Collector to take possession of any land, needed for public purpose, and on such possession being taken by Collector, land shall vest absolutely with the Government free from all encumbrances. Section 17(4) provides, where such urgency for the purpose of possession is to be acted upon, Government, shall declare that provision of Section 5-A shall not apply.

67. The circumstances, when Government would be justified to dispense with enquiry under Section 5-A while invoking urgency clause under Section 17, for the purpose of taking possession, has been considered in a catena of decisions in last several decades and it would be useful to refer some relevant authorities in this regard.

68. Right to file objection against proposal of acquisition of land published under Section 4 is a substantial right, consistent with principle of natural justice, since forcible acquisition of land, without consent of land owners, is a serious matter.

69. In *Nandeshwar Prasad v. U.P. Government* AIR 1964 SC 1217, Court said, "the right to file objection under Section 5-A is a substantial right when a person's property is being threatened with acquisition and we cannot accept that right can be taken away as if by a side wind".

70. In *Munshi Singh and others v. Union of India* (1973) 2 SCC 337, which is a decision of three judges bench, Court stressed and emphasised upon an inbuilt legislative recognition of principle of natural justice in Section 5-A and said:

"Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A".

71. In *State of Punjab v. Gurnail Singh and others* 1980 (1) SCC 471 it was held that it is fundamental that compulsory taking of a man's property is a serious matter and smaller the man the more serious the matter. Hearing him before

depriving him is both reasonable and preemptive of arbitrariness. Denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing, land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of Act, 1894. A slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes travesty of emergency power.

72. In *Shyam Nandan Prasad and others v. State of Bihar and others* (1993) 4 SCC 255 reiterating that section 5-A is mandatory, Court said "the proceeding before the Collector is a blend of public and individual enquiry".

73. In *Om Prakash v. State of U.P.*, (1998) 6 SCC 1, Court observed that:

"Inquiry under Section 5-A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of Constitution though right to property is no longer remained a fundament right, at least, observation regarding Article 14 vis-a-vis Section 5-A would remain apposite".

74. In *Union of India and others v. Mukesh Hans* (2004) 8 SCC 14, Court held that Section 17(4) is an exception to normal mode of acquisition. Mere existence of urgency or unforeseen emergency by itself is not sufficient to direct for dispensation of Section 5-A. Court reiterated that there must be real existing emergency for which an opinion must be formed by the Government, objectively. Court said:

"It requires an opinion to be formed by concerned Government that along with existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A enquiry, which indicates that the legislature intended that the appropriate Government to apply its mind before dispensing with Section 5-A enquiry. It also indicates the mere existence of an urgency under Section 17 (1) or unforeseen emergency under Section 17 (2) would not by itself be sufficient for dispensing with Section 5-A enquiry. If that was not the intention of the legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the legislature in Section 17 (1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A enquiry will be dispensed with, but then that is not language of the Section which, in our opinion, requires the appropriate Government to further consider the need for dispensing with Section 5-A enquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5-A inquiry does not mean that in every case when there is an urgency contemplated under Section 17(1) and unforeseen emergency contemplated under Section 17(2) exists that by itself would not contain the need for dispensing with Section 5-A enquiry. There is need for application of mind by appropriate Government that such an urgency for dispensing of Section 5-A enquiry is inherent"

75. In *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai & Ors.* (2005) 7 SCC 627 it was held that the provisions of Section 5-A of Act, 1894 must be read consistent with Article 300-A of the Constitution and it is akin to fundamental right of procedure before depriving a persons of his land, and must be strictly complied with.

76. In *Essco Fabs Pvt. Ltd. & Anr v. State of Haryana & Anr* (2009) 2 SCC 377 it was held that enquiry should not be dispensed with lightly.

77. In *Anand Singh and another v. State of U.P. and others* (2010) 11 SCC 242 Court considered as to when State would be justified in invoking power under Section 17(4) for acquisition of land and dispensing with enquiry under Section 5-A so as to take possession immediately. It is said that power under Section 17 is not to be exercised in a routine manner. It would be justified only when circumstances warrant immediate possession. It should not be lightly invoked. It is an exceptional power enabling land acquiring body to dispense with enquiry under Section 5-A. Government must apply its mind before dispensing with enquiry under Section 5-A whether urgency is of such a nature that justifies elimination of summary enquiry under Section 5-A. The mere mention of words in acquisition notification that Government is satisfied about urgency and dispensing with enquiry under Section 5-A may raise a presumption in favour of Government with per-requisite conditions for exercise of such power are satisfied but when challenged, Government has to produce relevant material before Court to show existence of such circumstances, which justify dispensation of inquiry and avail an exceptional power under Section 17. Court further said, "upon challenge being made to the use of power under Section 17 the Government must produce appropriate material before the Court that the opinion for dispensing with enquiry under Section 5-A has been formed by the Government after due application of mind on the material placed before it".

78. With regard to judicial review of exercise of power, Court in *Anand Singh and another* (Supra) further said in paras 45, 46, 47 and 48 as under :

"45. It is true that power conferred upon the Government under Section 17 is administrative and its opinion is entitled to due weight, but in a case where the opinion is formed regarding the urgency based on considerations not germane to the purpose, the judicial review of such administrative decision may become necessary.

46. As to in what circumstances the power of emergency can be invoked are specified in Section 17 (2) but circumstances necessitating invocation of urgency under Section 17(1) are not stated in the provision itself. Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated under Section 5-A may not be held and objections of land owners/persons interested may not be considered. In many cases on general assumption, likely delay in completion of enquiry under Section

5-A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realising that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously.

47. The special provision has been made in Section 17 to eliminate enquiry under Section 5-A in deserving and cases of real urgency. The Government has to apply its mind on the aspect that urgency is of such nature that necessitates dispensation of enquiry under Section 5-A. We have already noticed few decisions of this Court. There is conflict of view in the two decisions of this Court viz.; Narayan Govind Gavate and Pista Devi. In Om Prakash this Court held that decision in Pista Devi must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in Narayan Govind Gavate. We agree.

48. As regards the issue whether pre-notification and post-notification delay would render the invocation of urgency power void, again the case law is not consistent. The view of this Court has differed on this aspect due to different fact-situation prevailing in those cases. In our opinion such delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has been placed by the appropriate Government before the court justifying that urgency was of such nature that necessitated elimination of enquiry under Section 5-A."

79. In Radhe Shyam (Dead) through Lrs. and others v. State of U.P. and others 2011(5) SCC 553 it was reiterated that property of a citizen cannot be acquired by State without complying with the mandate of Sections 4, 5-A and 6 of Act, 1894. A public purpose however, loudable would not entitle Government to invoke urgency provisions, since the same have the effect of depriving owner of his right to property and, that too, without being heard. Only in a case of real urgency, Government would be justified in invoking urgency provisions. Section 17 should have been invoked only when purpose of acquisition cannot brook the delay of even few weeks or months. The authority must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A shall, in all probability, frustrate the public purpose for which land is proposed to be acquired. Satisfaction of Government on issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and can be challenged on the ground that authority did not apply its mind to relevant factors, and on record, there is no material justifying existence of alleged urgency. It also held that exercise of power under Section 17(1) necessarily does not result in exclusion of Section 5-A, inasmuch as, the person concerned can file objection and is entitled to be heard in support of his objection. The use of word "may" in sub-Section (4) of Section 17 shows that it merely enables Government to direct that Section 5-A would not apply to the cases covered under Sections (1) or (2) of Section 17. Therefore, mere fact that certain purposes may be treated as public purpose the for purpose of acquisition

but that by itself would not mean that there exists urgency to dispense with inquiry unless the circumstances actually and really are in existence to show that delay in taking possession would be adverse to public interest. It also held that Court can take judicial notice of the fact that for planning, execution and implementation of scheme relating to development of residential, commercial and industrial or institutional areas, Government takes few years, therefore, in such cases private property should not be acquired by invoking urgency clause as denial of Rule of audi alteram partem embodied in Section 5-A is not at all warranted in such cases.

80. In *Dev Saran and Others v. State of U.P. and others*, (2011) 4 SCC 769, Government proposed to acquire land for construction of District Jail at Shahjahanpur, as usual, inquiry under Section 5A was dispensed with by taking recourse to Section 17(4) of Act, 1894. Court found that purpose for which land was required, admittedly was a public purpose but dispensation of inquiry on the ground of urgency was not justified on the basis of facts of that case. Therein matter for acquisition was initiated vide Government Letter dated 04.06.2008; meeting for selection of suitable site was held on 27.06.2008; proposal for acquisition and construction was forwarded to "DLA" on 02.07.2008, who, in turn, forwarded to State Government on 22.07.2008; notification under Section 4 along with 17 was issued by State Government on 21.08.2008; it was published in local newspapers on 24th September, 2008, proposal for declaration under Section 6 was forwarded to "DLA" by Collector on 19.06.2009; "DLA" in turn forwarded to State Government on 17.07.2009 and ultimately declaration was issued under Section 6 on 10.08.2009 and published in local dailies on 17.08.2009, observing that there was a gap of 11 months and 23 days in publication of notifications under Section 4 read with section 17 and Section 6 shows that Government machinery has actually functioned with slow pace and there was no actual urgency, warranting recourse to Section 17(4) of Act, 1894. The relevant observation in this regard contained in paras 37, 38 and 39 of the judgment, read as under:

"37. Thus the time which elapsed between publication of Section 4(1) and Section 17 notifications, and Section 6 declaration in the local newspapers is 11 months and 23 days i.e. almost one year. This slow pace at which the Government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Section 17(4) of the Act.

38. In paragraph 15 of the writ petition, it has been clearly stated that there was a time gap of more than 11 months between Section 4 and Section 6 notifications, which demonstrates that there was no urgency in the State action which could deny the petitioners their right under Section 5-A. In the counter which was filed in this case by the State before the High Court, it was not disputed that the time gap between Section 4 notification read with Section 17, and Section 6 notification was about 11 months.

39. The construction of jail is certainly in public interest and for such construction land may be acquired. But such acquisition can be made only by strictly following the mandate of the said Act. In the facts of this case, such acquisition cannot be made by invoking emergency provisions of Section 17. If so advised, the Government can initiate acquisition proceeding by following the provision of Section 5-A of the Act and in accordance with law."

81. In *Darshan Lal Nagpal (Dead) By Lrs. v. Govt. of NCT of Delhi and others* (2012) 2 SCC 327 after having retrospection of some of authorities on the subject, Court in para 28 of the judgment stated as under:

"What needs to be emphasised is that although in exercise of the power of eminent domain, the State can acquire the private property for public purpose, it must be remembered that compulsory acquisition of the property belonging to a private individual is a serious matter and has grave repercussions on his Constitutional right of not being deprived of his property without the sanction of law - Article 300-A and the legal rights. Therefore, the State must exercise this power with great care and circumspection. At times, compulsory acquisition of land is likely to make the owner landless. The degree of care required to be taken by the State is greater when the power of compulsory acquisition of private land is exercised by invoking the provisions like the one contained in Section 17 of the Act because that results in depriving the owner of his property without being afforded an opportunity of hearing."

82. In *Ramdhari Jindal Memorial Trust v. Union of India and others*, (2012) 11 SCC 370 after referring to a large number of earlier precedents on the aforesaid questions including *Anand Singh* and another (*supra*) Court said that:

"Government when invokes urgency power under Sections 17(1) and (4) for the public purpose like "planned development of city" or "development of residential area" or "residential scheme", initial presumption does not arise in favour of Government. On the contrary, heavy burden lies on the Government to prove that use of power is justified and dispensation of inquiry was necessary. Power of urgency under Section 17 for a public purpose like "development of a housing scheme" or "residential scheme" cannot be invoked as a matter of rule or in a mechanical manner or by simply referring to language of the statute but is to be exercised as an exception".

83. In *Kamal Trading Private Limited v. State of West Bengal and others*, (2012) 2 SCC 25, Court said that "proceedings under Act, 1894 are based on the principle of eminent domain and Section 5 is only protection available to a person whose lands are sought to be acquired. It is minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the concerned authority, inter alia, important ingredient namely "public purpose" is absent in the proposed acquisition or that acquisition is otherwise malicious. The Act, 1894 being an ex-proprietary legislation, its provisions will have to be strictly construed". Court further said in paras 15 and 16 as under:

"15. Hearing contemplated under Section 5-A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under Section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector under Section 5-A(2). As said by this Court in *Hindustan Petroleum Limited (supra)*, the appropriate Government while issuing declaration under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf.

16. Sub-section (3) of Section 6 of the LA Act makes a declaration under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated under Section 5-A and the report made by the Land Acquisition Officer and his recommendations assume importance. It is implicit in this provision that before making declaration under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted under Section 5-A(2) of the LA Act. The recommendations must indicate objective application of mind.

84. In *Surinder Singh Brar and others v. Union of India and others*, (2013) 9 SCC 403, Court observed that "satisfaction recorded by appropriate Government that particular land is needed for a public purpose and declaration made under Section 6(1) will be devoid of legal sanctity, if statutorily engrafted procedural safeguards are not adhered to by the authority concerned. An attempt on the part of respondents made to argue that declaration under Section 6(1) is conclusive and satisfaction recorded therein cannot be subject to judicial review." A similar argument was negated in *Surendra Singh Brar and others (supra)* in para 87 of the judgment. Court said that "satisfaction of an appropriate Government envisaged in Section 6(1) must be preceded by consideration of the report prepared by Collector after considering objections filed under Section 5A and hearing the objectors. In the present case, this inquiry was itself dispensed with in a most arbitrary, whimsical and mechanical manner by invoking Section 17(4) illegally and in flagrant disregard of exposition of law laid down in various binding authorities, some of which are discussed above.

85. In *Union of India and others v. Shiv Raj and others* (2014) 6 SCC 564, Court in para 15 said that:

"Section 5-A confers a valuable right on the owner of land and it is not an empty formality. It is a substantive right, which can be taken away only for good and valid reasons and within the limitations prescribed under Section 17(4) of Act, 1894".

86. Right of hearing under Section 5-A has been held to be a fundamental/substantive right, not to be deprived of unless a clear case of existence of urgency on the basis of relevant material on record is made out.

87. The facts of the present case with which we are concerned, are worse than those in above authorities. Here the matter commenced in 2001 and ultimately declaration came to be published in September, 2005. More than 4 years and 3 months period has been consumed by respondents and still they have attempted to justify such urgency in the matter so as to dispense with inquiry under Section 5A, depriving bare minimum opportunity of hearing available to land owners enabling them to make their submissions against proposed acquisition and pursue land acquiring authorities not to acquire their land.

88. Above question is, therefore, answered in favour of petitioners and we hold that respondents illegally exercised power by invoking Section 17(4) of Act, 1894, so as to dispense with inquiry under Section 5A.

Issue-II: Permission or Sanction of NCRPB

89. In writ petition no. 2476 of 2012 (Balwant Rai Kathuria v. State of U.P. and others) NCRPB has been impleaded as respondent no.5. It has been pleaded that no approval has been obtained from NCRPB under Act, 1985. In paras 24, 25 and 26, it has been averred that GDA has not formulated any "Sub-Regional plan" in accordance with "Regional" and "Functional Plan" as per Section 17(3) of Act, 1985. Sub-Regional plan has to be in conformity with "Regional" and "Functional Plan" as per Section 20 of Act, 1985. NCRPB has complete control over "Sub-Regional Plan" prepared by participating States and "Sub-Regional Plan" can neither be implemented nor enforceable without approval of NCRPB. Provisions of Act, 1985 has overriding effect over any other inconsistent law. The land in question has been acquired without confirming Plan prepared by NCRPB and acquisition is contrary to Section 40 of Act, 1985.

90. In Supplementary Counter Affidavit sworn on 6th April, 2016 by Sri Rajendra Tayagi, Legal Assistant, GDA, it has been said in paragraph 3 that Master Plan, Ghaziabad was approved and came into force on 14.07.2005 whereas Regional Plan of National Capital Region (hereinafter referred to as "NCR") came into force on 17.09.2005. Master Plan, 2021 was considered in Regional Plan by NCR on 17.09.2005 and there was no requirement of approval of Master Plan, 2021 by NCRPB.

91. Act, 1985 was enacted by parliament on the resolution passed by Legislature of State of Haryana, Rajasthan and Uttar Pradesh under Article 252 of the Constitution of India. It is on the subject included in State List, Seventh Schedule

of Constitution.

92. No counter affidavit separately has been filed in the aforesaid Writ Petition No. 2476 of 2012 but in general supplementary counter affidavit on behalf of GDA, it has made a brief statement and it would be appropriate to refer the same as under:

"3. That, master plan Ghaziabad was approved and came into force on 14.07.2005 whereas the regional plan of NCR came into force on 17.09.2005. The master plan Ghaziabad 2021 was considered in regional plan of NCR dated 17.09.2005. There was no requirement of approval of master plan of 2021 by the NCR board."

93. We find that applicability and extent to which Act, 1985 is applicable has been considered in detail by Full Bench of this Court in *Gajraj Singh and others v. State of U.P. and others*, 2011 (11) ADJ 1. Court has observed in paragraph 249 that "Sub-Regional Plans are to be prepared by each participating State and is required to be submitted to NCRPB and Board communicate within 60 days its observation with regard to Sub-Regional Plans and thereafter participating State after consideration of observation would finalise Sub-Regional Plans after ensuring that it is in conformity with the Regional Plan and thereafter it can be implemented under Section 20 of the Act, 1985. In other words, Sub-Regional Plan has to be in conformity with the "Regional Plan and Functional Plans". After examining Sections 7 and 17 of Act, 1985, the Court observed that unless the directions of the Board are implemented in Sub-Regional Plan, the same cannot be implemented. Hence the provisions of Act, 1985 have to be interpreted to mean that there is a complete control over the "Sub-Regional Plans" prepared by participating State and mechanism provided is such that unless Sub-Regional plan is completely cleared by Board, the same can neither be implemented nor would be enforceable.

94. Then examining Section 40 of Act, 1985, Court has further observed that purpose of Section 40 is to promote the object of Act, 1985 when land used in NCR is controlled by various plan as contemplated by Act, 1985 acquisition of land and has to be in line and conformity with aforesaid Act. There is no averment made by respondents in any of the affidavits that Sub-Regional Plan that GDA has formulated any Sub-Regional Plan and same has been submitted to NCRBP for consideration and procedure as discussed above, has been undergone. A very vague and general reply in para 3 of supplementary counter affidavit as noted above, has been given. We have also noticed above that though land in question under Master Plan, 2001 was a recreation site and conversion of land to be used as "residential" was necessary. Without approval of NCRPB of altered plan, this was not permissible. We find that a similar aspect in form of illustration has been noticed in *Gajraj Singh and others* (supra) and Court has held that change of user's acquired land without approval of NCRPB is prohibited. The said observation contained in para 265 is reproduce hereinunder;

"265. Now.....

Section 40 of the NCRPB, 1985 has to be interpreted in a manner so as to promote the object of the Act. When the land use in the NCR Region is controlled by various plans as contemplated by the NCRPB Act, 1985 the acquisition of land has also to be in line and conformity with the aforesaid Act, 1985. This can be illustrated by giving a small example i.e. supposing an area in the NCR is reserved for agricultural use and actual agricultural is taking place in the said area, any exercise by the Authority to acquire land for residential purpose shall be simply prohibited. The Authority in the present cases have indiscriminately proceeded to acquire the land in the name of Planned Industrial Development. In event where agriculture is the reserved purpose acquiring the land of the agriculturist shall be with no object since the Authority itself shall not carry on agriculture and there shall be no purpose to create hindrance in the right of the agriculturists to carry on their agriculture in the said area."

(emphasis added)

95. In Gajraj Singh and others (Supra) an attempt was made to argue that requirement of approval or consideration by NCRPB can be complied with subsequently and at the time of acquisition it is not necessary but this has been rejected by Full Bench in paragraph 267, Court said as under;

"Section 40 of the NCRPB Act, 1985 as noticed above has to be given some meaning and purpose. Section 40 of the Act, 1985 has to be read as a precondition for participating State to acquire the land, condition being that acquisition be made in NCR only to give effect to any regional, functional plan, sub-regional plan or project plan framed under the 1985 Act."

96. In view of law laid down in Gajraj Singh and others (supra) facts are available in this bunch of petitions. We have no manner of doubt that no clearance has been obtained by GDA from NCRPB though it was mandatory, and therefore, proceedings for acquisition in question are not in conformity with requirement of Act, 1985.

Issue-III: Whether declaration is beyond one year as provided in Section 6(1) proviso (ii) of Act, 1894.

97. As already said, Section 4 notification was published in Gazette (Extraordinary) on 16.10.2004 while Section 6 notification was published in Gazette (Extraordinary) dated 28.11.2005. It is thus pleaded on behalf of petitioners that this delay would result in lapse of entire acquisition proceedings, since Section 6 notification was not published within one year of notification under Section 4.

98. It is pointed out that under Section 6(1)(ii), there is complete embargo on publication of declaration after expiry of one year from date of publication of notification under Section 4(1) of Act, 1894. Reliance has been placed on the decisions in Padam Sundara Rao (dead) and others v. State of Tamilnadu and

others, (2002) 3 SCC 533, Anil Kumar Gupta v. State of Bihar and others, (2012) 12 SCC 443, Devendra Kumar Tyagi and others v. State of Uttar Pradesh and others, (2011) 9 SCC 164 and Division Bench's judgment of this Court in Mahavir Sahkari Avas Samiti Ltd. v. State of U.P. and others, 2006 (8) ADJ 203.

99. Defence of respondents is that notification under Section 4 was published in Gazette dated 16.10.2004; local publication in two newspapers was made on 22.10.2004. There was a substantial error in notification dated 16.10.2004 for which a corrigendum was published on 19.01.2005 and 02.08.2005; publicity in locality by Munadi was made on 02.12.2004 and it is last date of various kinds of publicity of notifications which would count to find out whether official declaration has been made within one year or not. Hence, it is within one year.

100. Sri Manish Goyal, learned counsel for petitioners vehemently contended that no Munadi in accordance with law has taken place and paper book no.239 dated 02.12.2004 appears to have been manufactured, inasmuch as, there is no provision where any payment can be made in cash to a person who is entrusted with duty of Munadi. He further submits that Order 21, Rule 54 is a pari materia provision and law required that there should be a public notice i.e. to all individual persons concerned, hence there is no compliance of law in this regard and the alleged Munadi came to rescue of respondents to show that the final declaration was made within one year.

101. Section 4 contemplates; (i) publication in final Gazette; (ii) publication in two daily newspapers circulating in locality of which at least one should be in regional language; and (iii) public notice of substance of such notifications could be given at convenient places in said locality. Section 4 further clarifies that it is last date of such publication and giving of such public notice which shall be considered to be a date of publication of notification. No specific procedure has been prescribed as to how Collector shall cause substance of notification to be given at convenient place in locality.

102. Question whether there was Munadi or not is a simple question of fact. From pleadings in leading Writ Petition no.4986 of 2005, we find no assertion, whatsoever, that there is non-compliance of Section 4 on the part of Collector by not proceeding to cause public notice in locality concerned. What has been said in paragraph 7 of second supplementary affidavit sworn by Sri Deepak Singh, petitioner-4 is that document dated 02.12.2004 with regard to Munadi is fake for the reason that cash payment is not permissible for Government work. However, he has not stated anywhere that, in fact, no such Munadi has taken place. He has tried to create doubt that, payment since made in cash, it has actually not taken place. Factum whether payment in cash is permissible in Government transaction or not is a different thing. In order to consider validity of compliance of Section 4, it is sufficient, if there is local publicity by Collector by beating of drums i.e. Munadi. Moreover, mere fact that payment is shown to have been made in cash, we do not find per se any illegality therein, and also no provision has been placed before us to show that small amount of Rs.2500/- cannot be

given in cash. Petitioner has sworn this paragraph on personal knowledge. There is no statutory or other prohibition in making payment of Rs.2500/- in cash to a person, doing a job of beating of drums, particularly at a time, when opening of account in Bank was quite a difficult task in 2004, though it may not be so in 2016. On sheer conjecture and surmises, we, therefore, find no reason to doubt factum of beating of drum on 02.12.2004 and that being so, it cannot be said that declaration under Section 6(1) is barred by time.

103. In *Urban Improvement Trust, Udaipur v. Bheru Lal and orthers*, (2002) 7 SCC 712, it was held that "if appropriate Government is satisfied that any particular land is needed for the public purpose, a declaration is to be made to that effect within a period of one year from the date of publication of notification under Section 4(1) of Act. Section 6(1), therefore, does not require that such declaration should also be published in official gazette within a period of one year from date of publication of notification under Section 4(1). Time limit of one year is prescribed for declaration to be made that land is needed for a public purpose under signature of a Secretary or authorised officer of such Government. It does not mean publication in gazette or newspaper. Similarly, in *Sriniwas Ramnath Khatod v. State of Maharashtra and others*, AIR 2002 SC 187, Court observed that "decision to make a declaration is to be taken within a period of one year, and publication can be made subsequently as it is a merely a ministerial act".

104. Record shows that proposal to make declaration under Section 6 (1) was initiated by Special Secretary on 27th July, 2005, whereupon certain queries were made by Chief Minister on 27th October, 2005. These queries were replied vide Secretary, Urban Development's note dated 18.11.2005 and it was approved by Chief Minister on 25.11.2005. It is thus decided to make declaration under Section 6.

105. In order to see, whether there is compliance of Section 6(1)(ii), it is last date when requisite publicity/publication under Section 4(1) has been made and date on which decision for acquisition of land by making declaration under Section 6 is taken.

106. In *Mohan Singh and other v. International Airport Authority of India and others*, (1997) 9 SCC 132, Court observed that "notification under Section 4(1) needs three steps; (1) publication in official Gazette; (2) publication in two daily newspapers having circulation in locality; and (3) Public notice of substance of such notification to be given at convenient places in locality. It is also held that last of date of publication shall be relevant for the purpose of computation of limitation of one year under Section 6.

107. Taking into account above discussions and facts of the present case, we find that notification under Section (4) was published in gazette on 16.10.2004; in Newspapers on 22.10.2004; and Munadi was carried out on 02.12.2004. Taking last date for the purpose of limitation, declaration under Section 6 is within limitation.

108. Moreover, counsel for respondents contended that there was substantial mistake in the notification under Section 4(1) and hence corrigendum was published on 19.01.2005 and 02.08.2005. Without such corrigendum, acquisition notification under Section 4(1) could not have been given effect, therefore, from the date of corrigendum also limitation under Section 6 (1) (ii) should be computed and from that point of view also, declaration under Section 6 is within limitation. Reliance is placed on Division Bench judgement in Ram Kumar v. State of U.P. and others 2015 (6) ADJ 273 (DB). Per contra, Sri Manish Goyal relied on Anil Kumar Gupta v. State of Bihar and others, (2012) 12 SCC 443 and submitted that corrigendum will relate back to date on which notification under Section 4(1) was issued, hence date of notification of corrigendum will not help respondents.

109. We have gone through the decision in Anil Kumar Gupta (supra) and find that it was not disclosed therein that corrigendum was published in the manner prescribed under Section 4 i.e. in official Gazette, while in the present case, it is not in dispute that corrigendum was published in official gazettes dated 19.01.2005 and 2.08.2005. Nature of corrigendums show that same are not mere typographical error but substantial mistake committed with regard to district also, which was corrected. Such corrigendum, therefore, would be relevant so as to take last date of notification under Section (4) for the purpose of determining limitation for declaration under Section 6 and in the light of judgment of Ram Kumar (supra), we find that declaration under section 6 is within the period of limitation of one year.

109-A. There is also one more relevant aspect. The date when stay order is passed has to be ignored for the purpose of computing period of one year. In this bunch, interim order was passed in leading Writ Petition on 22nd October, 2005 and period thereafter will have to be excluded and this also fortifies our inference that notification under Section 6 is not barred by limitation.

110. Some argument has been advanced on the question that corrigendum published subsequently would not extend time to relate back but in view of our findings above, this aspect loses its importance relevance, and therefore, it is not necessary to look into this aspect.

111. Last submission is that the acquisition is colourable exercise of power since acquired land is mostly being handed over to private builders, therefore, it is bad in law.

Issue-IV: Colourable Exercise.

112. Here is not a case where entire land is proposed to be acquired for the benefit of one or two or more identified private builders but for "Proposed Planned Industrial Development" which includes development of residential colonies also acquisition proceedings have been initiated and thereafter for the purpose of said development, GDA, it appears that, has allowed participation of private builders also by allotting land to them and permitting them to develop for

residential buildings. It is not a case where anything has been brought on record to show that in garb of public purpose, land has been acquired for benefit of any private individual without complying with requirement of law or procedure necessary and acquisition is made for a private person/company. In fact, having gone through all writ petitions, we find that there is no such pleadings and in some, a vague pleading has been made without substantiating the same, therefore, this question, in our view, in absence of pleading of necessary fact, it is not to be gone into. We are not impressed at all. We cannot adjudge validity of impugned acquisition notifications on aforesaid grounds in absence of specific pleading and material to substantiate the same.

113. Lastly, it is argued that award has been made after two years and, therefore, acquisition stands lapsed under Section 11A of Act, 1894. It is not in dispute that in most of writ petitions interim orders have been passed. In leading writ petition itself interim order was passed on 22nd October, 2005.

114. Explanation of Section 11A clearly provides that in computing two years period, during which any action or proceeding to be taken in pursuance of declaration is stayed by Court of law shall be excluded. In view thereof, it cannot be said that acquisition in question can be claimed by petitioners to have lapsed for non-compliance of Section 11A, therefore, this argument is rejected.

115. In the result and in view of our findings dispensation of inquiry under Section 5A by exercising power under Sections 17(1) and (4) was arbitrary and illegal and also there was no compliance of provision of National Capital Region Planning Board Act, 1985 at any stage, impugned acquisition notifications cannot be sustained. Had there been deficiency only with regard to illegal dispensation of inquiry under Section 5A, we could have set aside only final declaration notification issued under Section 6 and permitted respondents to proceed from stage of inviting objection from petitioner tenure holders but since mandatory provisions of Act, 1985 has also not been complied with, in impugned acquisition proceedings, we find no other way but to quash both the acquisition notifications issued under Sections 4 and 6 in respect of land belonging to petitioners in all writ petitions.

116. We are confining relief in these writ petitions to petitioners only in view of law laid down in Mahavir Sahkari Avas Samiti Ltd. (supra), wherein Court said in paragraph 15, said as under;

15. There is no dispute to the settled legal proposition that in case the acquisition proceedings are quashed by the Court, it will cover the land of only those persons who had approached the Court by filing the petitions and it would not annul the proceedings in respect of those persons who had not approached the Court.

117. Writ petitions are allowed. Impugned acquisition notifications dated 16th October, 2004 and 28th November, 2005 in so far as they relate to the petitioners' land are hereby set aside. Petitioners shall be entitled to cost which

we quantify to Rs. 5000/- for each set of writ petition against respondents 1, 2 and 3.