

**(2002) 05 MP CK 0022**

**In the Madhya Pradesh High Court**

**Case No : L.P.A. No"s. 273, 320 and 321 of 2002**

Jaganath Dhaniram Jindal and another

APPELLANT

Vs

State of M.P. and others

RESPONDENT

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**Date of Decision :** 30-05-2002

**Acts Referred:**

Land Acquisition Act, 1894 — Section 17(1), 4, 5A

**Citation :** (2003) 1 MPLJ 152

**Hon'ble Judges :** Dipak Misra, J;Ajit Singh, J

**Bench :** Division Bench

**Advocate :** N.S. Kale, in L.P.A. No. 273 of 2002 and Rakesh Shroti in L.P.A. No. 320 of 2002, for the Appellant; S.K. Yadav, Government Advocate, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Dipak Misra, J.

In these three appeals the sustainability of the order dated 14-3-2002 passed by the learned Single Judge in a composite order in W.P. No. 7045/2000, W.P. No. 85/2001 and 245/2002 have been called in question and as common questions of law were raised they were heard analogously for the purpose of admission and are disposed of by this common order. It is worthwhile to mention here as the learned Single Judge has referred to the facts in general and dealt with the legal contentions raised by the learned counsel for the parties in an elaborate manner, compartmentalizing every facet of submission, we think it apposite to state the facts from the order and deal with the contentions which have been highlighted before us.

The facts as have been uncurtained are that a notification u/s 4 read with section 17(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was issued on 19-10-2000 which was eventually published in the Official Gazette dated 24-11-2000. Initially, it was decided to acquire 63.344 hectares of land

situate in different villages, namely, Ratanpur Sadak, Chhan, Maksi, barrai, Rapadiya, Jhagaria Khurd, Khajuri Khurd and Khajuri Kala in Tahsil Huzur, District Bhopal. The State Government took the decision that there was urgency for acquisition as land in question was required for construction of bypass road. In accordance with the aforesaid decision the urgency clause as engrafted u/s 17 of the Act was invoked and the enquiry u/s 5A was dispensed with. During the pendency of the writ petitions a notification u/s 6 of the Act was issued on 14-12-2000 and accordingly, amendments were made in the petitions incorporating the said notification and challenging the legal propriety of the same.

It was putforth in the writ petitions that the land of the petitioners therein situate in village Ratanpur Sadak in the initial proposal was for less area, later on proposal was amended and the area increased and such an increase was not permissible in law. It was urged before the learned Single Judge that the Bhopal Development Plan had already been prepared and the bypass road is being constructed in total contravention of the provisions of the said Development Plan which does not have sanction of law. It was highlighted that the notification is vague as survey numbers are not being mentioned and hence, the identity of the land on scrutiny of the notification issued u/s 4 of the Act is not discernible which makes it vulnerable in law. It was submitted before the learned Single Judge that there was no mention in the notification that section 17(4) was taken recourse to and, therefore, the dispensation of enquiry as envisaged u/s 5A of the Act was pregnable. It was putforth that competent authority has not sanctioned invocation of section 17(4) of the Act and that alone creates a dent in the notification which is incurable and makes it indefensible.

On behalf of the functionaries of the State a stance was taken that there has been no violation of Bhopal Development Plan and in any case the land in question does not come within the ambit and sweep of the said plan and hence, the question of modification or alteration does not arise. It was also setforth that construction of bypass road is an independent act having no connectivity with the Bhopal Development Plan. No Objection Certificate was taken from the Town and Country Planning Authority. It was also canvassed before the learned Single Judge that there has been application of mind and the urgency clause was invoked as there was heavy traffic and it was required to be controlled and that apart, sanction of fund under the Pilot Project was an immediate factor, the importance of which cannot be marginalised. The proceeding of the meeting, held by the Secretary, was brought on record. It was also putforth that there was clerical mistake in the proposal which was pointed out by the Town and Country Planning Authority. It was also argued that the Commission has sanctioned the acquisition and the same clearly shows the applicability of mind and appreciation of the factum of urgency.

It is appropriate to state here that in W.P. No. 85/2001 an additional submission was raised before the learned Single Judge that after acquisition certain temples were demolished. The aforesaid assertion was controverted by filing the counter

affidavit.

The learned Single Judge after hearing the learned counsel for the parties came to hold that there was no vagueness in the notification issued u/s 4 of the Act inasmuch as the particulars which had been given in the notification was good enough for identification to ostracise the infirmity of vagueness; that the acquisition of land is not contrary to the Bhopal Development Plan as the Town and Country Planning Department had issued a "No Objection Certificate" and further the challenge to a notification issued u/s 4 of the Act on the ground that the purpose of acquisition is different than the permitted land used under the master plan was untenable; that the records clearly show that there has been invocation of urgency clause as encapsuled u/s 17(4) of the Act because such a satisfaction is subjective in nature and there was enough material on record to arrive at such a conclusion; that non-mentioning of section 17(4) of the notification cannot be regarded as central vice to nullify the notification issued whereby the urgency clause has been invoked; that the facts which have been brought on record clearly exposit that there is immediacy and urgency in the matter and as the project is funded by Foreign Government and is taken as Pilot Project it is peremptory to be completed within a specified time and thence, the construction of bypass as an actual fact cannot brook any delay; that the revised plan for acquisition of 154.46 acres is neither illegal nor mala fide as the same has been approved by the competent authority and notifications were issued for the same; that satisfaction in regard to urgency is perceptible and that meets the requirement of law; and that the destruction of temple as alleged having been disputed and being in the realm of facts cannot be adverted to in the writ petition.

We have heard Mr. N.S. Kale, learned senior counsel and Mr. Rakesh Shrotri for the appellants and Mr. S.K. Yadav, learned Government Advocate for the respondents. At the very outset we must say that various submissions were raised before the learned Single Judge. He has dealt with the contentions in an elaborate manner. Mr. Kale, learned senior counsel, raised only two fold contentions before us, namely, the learned Single Judge has fallen into an error by coming to the conclusion that there is material on record for invocation of power u/s 17(4) of the Act inasmuch as the learned Single Judge while arriving at such a conclusion has not kept in view. The subtle distinctions between section 17(1) and 17(4) of the Act, and secondly the provisions of section 23-A of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as "the Adhiniyam") have not been adverted to in proper perspective and when there is a change in the master plan, the land acquisition proceedings could not have been initiated. The learned senior counsel to bolster his submission has placed reliance on the provisions of the Act and the Adhiniyam and also placed reliance on the decision rendered in the case of Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, .

We may hasten to add here that though the matters were listed for admission, we thought it apposite to have the submission of Mr. S.K. Yadav, learned

Government Advocate, who unhesitatingly argued the matter in appugnation to the submissions raised by the learned senior counsel and opposed the submissions with vehemence. Learned Government Advocate has putforth that a case of this nature is absolutely urgent as it is a Pilot Project and foreign funds are to be utilized and a bypass road has to be constructed for the interest of the larger collective and, therefore, individual interest must succumb. To elucidate the aforesaid submission it was urged by him that the competent authority invoked the urgency clause and the material on record would go a long way to show that the said exercise was carried out and it not solely deducible on the principles of inference. It was canvassed by him that non-mentioning of section 17(4) of the Act in the notification does not vitiate the same as the law is well settled that records can be produced to substantiate that there had been application of mind to take recourse to section 17(4) of the Act in its entirety. The learned Government Advocate has further submitted that the master plan and construction of bypass road are two independent actions and the proceeding under the Land Acquisition Act is not affected or controlled by the Adhiniyam. He has also referred to Annexures-RA-8 and RA-10 to pyramid his submission that there had been sanction for invocation of the urgency clause.

In order to appreciate the gravamen of submission of Mr. Kale, learned senior counsel, we think it apposite to reproduce section 17(1) and 17(4) of the Act. They read as under:-

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

xxxx xxxx xxxx

17(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the date of the publication of the notification u/s 4, sub-section (1).

It is urged by him that if the anatomy of the aforesaid provision is dissected there remains no trace of doubt that there is a gulf of distinction between section 17(1) and section 17(4) of the Act. It is his proponement that a positive opinion has to be formed by the appropriate Government that there has to be dispensation of enquiry as envisaged u/s 5A of the Act and if such an opinion is not formed the urgency clause does not get attracted and section 5A of the Act will have scope for full play. As has been indicated earlier the learned senior counsel has placed reliance on a three Judge Bench decision rendered in the case

of Nandeshwar Prasad (supra). In the aforesaid case it has been held that it not necessary even where the Government makes a direction u/s 17(1) that it should also make a direction u/s 17(4). If the Government makes a direction only u/s 17(1) the procedure u/s 5A would still have to be followed before a notification u/s 6 is issued. Their Lordships further laid down that it is only when the Government makes a declaration u/s 17(4) of the Act then it becomes not necessary to take action u/s 5A of the Act and make a report thereunder.

From the aforesaid decision it is quite vivid that Sub-sections (1) and (4) of section 17 are two independent provisions and section 17(4) clearly lays a postulate that an order has to be passed dispensing with an enquiry u/s 5A of the Act. It is not clear from the aforesaid decision that it is obligatory on the part of the competent authority to mention section 17(4) of the Act in the notification. In our considered view non mentioning of the said provision does not make the notification susceptible. What requires is that there has to be an order or declaration. There has to be a decision. The learned Single Judge in paragraph 29 of the order has come to hold that various proceeding indicating that enquiry was proposed to be dispensed with and the Commissioner has clearly sanctioned the proposal. As this was the main plank of submission of Mr. Kale, learned senior counsel appearing for the appellant, we have also dwelled upon this aspect and adverted to the realm of facts. The learned Government Advocate has drawn our attention to certain documents as has been indicated hereinbefore. We have perused the said documents. On a scrutiny of the same it is clearly perceptible that the Commissioner had granted permission u/s 17(1) of the Act. The learned Government Advocate has also drawn our attention to the notification. In the notification it has been clearly mentioned that there shall be dispensation of enquiry as envisaged u/s 5A of the Act. Submission of Mr. Kale is that the insertion of such an aspect in the notification does not make the notification valid. It is also putforth by him that there must be a decision in this regard. On a perusal of the sanction order passed by the Commissioner and the acts taken by the State Government it is quite clear that the State Government wanted to invoke the urgency clause. True it is, in the case of Nandeshwar Prasad (supra) it has been held that it does not necessarily mean that when an order is passed u/s 17(1), an order u/s 17(4) is also passed. Their Lordships further observed that in law it is not necessary that this should be so. In the case at hand what has weighed with us is that though there is mention of section 17(1) in various correspondences, the nature and tenor of correspondences, the action taken by the State Government from various angles and the "No Objection Certificate" obtained from the competent authority of the Town and Country Planning Department clearly go a long way to show that intention was to dispense with the enquiry and the said intention has been reflected in the notification wherein there is unequivocal mention that enquiry u/s 5A has been dispensed with. True it is, in the notification section 17(4) has not been mentioned, but we are of the considered view that such non mention does not vitiate the notification inasmuch as quintessence of the provision of section 17(4)

finds place in the notification. The Government might not have specifically stated in its correspondences to dispense with the enquiry but when the notification clearly spells out so and the urgency of the matter makes it absolutely graphic, this Court cannot close its eyes and come to hold that there was no intention to dispense with the enquiry. In fact, on a periscopic analysis of the documents in entirety the mapping becomes clear and the substratum of purpose is perceivable. When the notification is express and explicit in this regard and the attending circumstances show there is immediacy and urgency we unhesitatingly hold that competent authority had understood the correspondence in this manner and accordingly, the notification had been issued. We may hasten to add here that in the case of Nandeshwar Prasad (supra) the Apex Court has also used the word "declaration" in paragraph 11 of the judgment. The notification is a declaration. Hence, we are not persuaded by the submission of Mr. Kale that no order has been passed for dispensing the enquiry as envisaged u/s 5A of the Act.

The next contention raised by Mr. Kale, learned senior counsel, is that there has been violation of provision enshrined u/s 23A of the Adhiniyam and such violation makes the notification issued under the Adhiniyam sensitively susceptible. Per contra, Mr. S.K. Yadav, learned Govt. Advocate contended that provisions of both the Act and the Adhiniyam operate in different fields.

To appreciate the aforesaid submissions it is apposite to reproduce section 23-A of the Adhiniyam. It reads as under:-

23-A. Modification of Development Plan or Zoning Plan by State Government in certain circumstances. - (1) The State Government, on its own motion or on the request of Development Authority, may make modification in the Development Plan or the Zoning Plan for urgent public purpose. The modification so made in the Development Plan or Zoning Plan shall be an integrated part of the revised Development Plan or Zoning Plan.

(2) The State Government shall publish the draft of modified plan together with a notice of the preparation of the draft modified plan and the place or places where the copies may be inspected, continuously for two days in such two daily news papers which are in the approved list of Government for advertisement purpose having circulation in the area to which it relates and a copy thereof shall be affixed in a conspicuous place in the office of the Collector, inviting objections and suggestions in writing from any person with respect thereto within fifteen days from the date of publication of such notice.

After considering all the objections and suggestions as may be received within the period specified in the notice and shall, after giving reasonable opportunity to all persons affected thereby or being heard, the State Government shall confirm the modified plan.

(3) The provisions of sections 18, 19 and 22 shall not apply for modification made by the State Government.

Explanation.- For the purpose of this section "public purpose" includes creation, development and maintenance of human settlements or any part thereof.

On a perusal of the aforesaid provision and the provisions enshrined under sections 4 and 17 of the Act we are of the considered view that the Land Acquisition Act is not regulated or its provisions are in any way abridged by section 23A of the Adhiniyam. It is apposite to mention here that the learned single Judge has placed reliance on the decisions rendered in the case of State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc., and S.S. Darshan Vs. State of Karnataka and others, . In the case of L. Krishnan (supra) the Apex Court held that section 4 of the Act does not state expressly or by necessary intendment lays a postulate that before a notification is issued or published thereunder proposing to acquire the land for the purpose of a body like Tamil Nadu Housing Board, a duly published scheme prepared in accordance with the relevant Act should be enforced. In the aforesaid decision their Lordships clearly laid down that the Land Acquisition Act is not nullified or controlled by the provisions of Tamil Nadu State Housing Board Act. In the case of S.S. Darshan (supra) a two Judge Bench of the Apex Court came to hold as under:-

11. The last submission of learned counsel for the appellant is that the user of the acquired land shown in the master plan being different, there cannot be a conversion of the user except in accordance with the provisions for making the change in the land use. It is not a case of change of user by the owner of the land but one of acquisition by the State under the provision of the Land Acquisition Act, 1894. This argument also had no merit.

In view of the aforesaid enunciation of law we experience no difficulty to concur with the view expressed by the learned Single Judge that section 23A of the Adhiniyam does not have any over-riding effect over section 4 or section 17 of the Act. In fact, if we allow ourselves to say so, they operate in two different spheres and as a proposition of law it does not warrant any kind of fusion.

Before we part with the case we think it apposite to mention here that as the construction of bypass road is undertaken and the project is funded by a foreign government, it has its immediacy and it has to be completed in quite promptitude. It really cannot brook any delay. The notification published by the State Government is quite unequivocal and clear that there has been dispensation of enquiry u/s 5A of the Act. When the intention of the notification is absolutely clear there is no reason to interpret to dissect it in a technical manner to find faults with it as such an anatomical dissection or X-ray of the provisions to the inner spectrum solely for the purpose of finding out a technical remora for construction of bypass road, in our considered view, is absolutely unwarranted. In our view, if the entire gamut of facts are appreciated in proper perspective in the backdrop of declaration made in the notification there remains no scintilla or trace of doubt that there is urgency in the matter and the competent authority has consciously acted and the notification has come into being. The same is beyond assail.

Resultantly, the appeals, being sans merit, stand dismissed in limine without any order as to costs.