
(2002) 03 MP CK 0088

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7045 of 2000 and W.P. No. 85 and 2452 of 2001

Jagannath Dhaniram Jindal and another

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(4), 4, 6

Citation : (2002) 4 MPLJ 477

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Sanjay K. Agrawal, for the Appellant; A.S. Raizada, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

In these writ petitions, the petitioners are challenging the notification issued u/s 4 read with section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act"). For acquisition of land for construction of by-pass from Bhopal-Hoshangabad road to Bhopal-Raisen road.

The notification u/s 4 was issued on 19-10-2000 which was published to be in the official gazette on 24th November, 2000. It was decided to acquire 63.344 hectares area falling in different villages; Ratanpur Sadak, Chhan, Maksi, Barra, Rapadiya, Jhagaria Khurd, Khajuri Khurd, Khajuri Kala situated in Tehsil Huzur District Bhopal. It was decided by the State Government that, there was urgency and the acquisition was for urgent public purpose of construction of by-pass road. Thus, a decision was taken to invoke section 17 sub-section (1) and enquiry u/s 5A was dispensed with. During the pendency of the writ petition notification u/s 6 was issued on 11-12- 2000 Annexure-P/17. Writ petition has been amended to incorporate the fact and for seeking the relief of quashment of the notification issued u/s 6.

The case of the petitioner is that the acquisition is culpable exercise. The land of the petitioner situate in village Ratanpur Sadak in the initial proposal was for acquisition of less area, later on proposal was amended before the notification was issued u/s 4 and area was increased. Petitioner submits that this increase in area was made mala fide and the land of the petitioner is not required. It is further submitted that the Bhopal Development Plan was prepared and this bypass is being constructed in contravention of the provision of the said Bhopal Development Plan. It is further submitted that the notification is absolutely vague as survey numbers are not mentioned in the notification issued u/s 4, thus, it was not possible to the petitioner to raise the objection and identify the land from the notification issued u/s 4. It is further submitted that there is no mention in the notification that section 17(4) was invoked, hence, the order dispensing an enquiry u/s 5A of the Land Acquisition Act is bad in law. The competent authority has not sanctioned the invoking of section 17(4) of the Land Acquisition Act, as such the notification dispensing with the enquiry u/s 5A issued u/s 4 read with section 17 is bad in law and is liable to be quashed.

In the return filed by the respondents it is contended that there is any violation of the statutory provision of Bhopal Development Plan 2005. The land in question does not fall within the ambit of Bhopal Development, therefore, the question of modification alternation does not arise. It is submitted that the Bhopal Development Plan lay out does not include the petitioners land or any land of village Ratanpur Sadak. The acquisition of the land for the construction of the bypass is an independent act and has no connection with the Bhopal Development Plan 2005. It is further contended that the petitioner cannot be permitted to allege mala fide as no particular facts constituting mala fide are given, vague plea has been taken. No objection certificate was taken from the town and country planning Annexure-RA/1. When the amount was deposited, urgency clause was proposed to be invoked. It is denied that the Collector acted mechanically without application of mind. It is contended that there is urgency of the purpose because of the heavy traffic and sanction of the fund under the pilot project matter is urgent. Proceeding of the meeting held by the Chief Secretary has also been filed as Annexure-RA/4. It is also contended that there was a clerical mistake in the first proposal which was pointed out by the town and country planning, later on the mistake was rectified and due proposal was sanctioned by the town and country planning which included the petitioners land. In the earlier plan the road was crossing the demarcated residential area, therefore, the old plan was not found suitable by the Nagar Tatha Nivesh authority, which accepted the revised plan and no objection certificate was granted. There was no ill-will, but, it was for the benefit of the public that the plan was revised, the Commissioner had sanctioned the acquisition as per the authority in Annexure-RA/8. Sanction is RA/5.

In W.P. No. 85/2001 additional submission is raised that after acquisition of the land certain temples were demolished. This fact is denied in the return filed in W.P. No. 85/2001.

I take up for consideration the first submission raised by the petitioner that the notification issued u/s 4 is vague inasmuch as the survey numbers of the land are not mentioned and the description of the land is vague. In the instant case in the notification in question issued u/s 4 mentioned the name of the "locality" as "Ratanpur Sadak", "Tehsil" has been mentioned as "Huzur" and the approximate area to be acquired in hectare has also been mentioned. It was further the note appended that the map could be seen in the office of the Collector in land acquisition branch. Public purpose has also been clearly stated as "construction of the road from Bhopal-Hoshangabad road to Bhopal Raisen Road". A plain reading of section 4(1) of the Land Acquisition Act mentions that the land in any locality is needed or likely to be needed for a public purpose. Use of words "land in any locality" and "is needed or is likely to be needed" show that at the stage of notification u/s 4(1), it is not absolutely necessary that the Government should have made up its mind finally that any particular land or land in the locality is needed or is likely to be needed for the public purpose mentioned in the notification. Government may not in fact possessing all the necessary details on which it can decide which land in the locality would be suitable for the public purpose what is intended to be made clear by the notification Investigation into necessary data is enjoined u/s 4(2) which empowers an entry to carry out various operations mentioned therein on any land in such locality. Sub-section (2) of section 4 contemplates to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether the land is adapted for such purpose and then "to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon." Thereafter the Government may be in a better position to decide which particular land in locality is adopted or suitable for the public purpose. Section 4 does not require that any land should be particularized, only the "locality" is required to be particularized.

In *Babu Barkya Thakur Vs. The State of Bombay and Others*, , the Apex Court considered the purpose of notification u/s 4 and laid down as under:

"The purpose of the notification u/s 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be adapted for the purpose for which it was sought to be acquired. It is only u/s 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a company. What was a mere proposal u/s 4 becomes the subject matter of a definite proceeding for acquisition under the Act."

In *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, the Supreme Court emphasized that at the stage of section 4 the land is not particularized, but, the only locality is mentioned. Their Lordships also emphasized that section 4 specifies the locality in which the land is acquired and

provides for survey to decide what particular land out of the locality would be needed, the notification informs that the land is required or would be required in a particular locality. Section 4 specifies the locality, followed by objections and making up of its mind by the government what particular land out of that locality it needs. The relevant observations are quoted below:

"Section 4 specifies the locality in which the land is acquired and provides for survey to decide what particular land out of the locality would be needed,"

"The notification u/s 4(1) thus informs the public that land is required or would be required in a particular locality and thereafter the members of the public owning land in that locality have to make objections u/s 5A"

"But as we read these three sections together we can only find that the scheme is that section 4 specifies the locality, followed by objections and making up of its mind by the government what particular land out of that locality it needs;"

"At the stage of section 4 the land is not particularised but only the locality is mentioned."

Learned counsel for the petitioner has placed reliance on a decision of the Supreme Court in *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others*, which relied on the decision in *Narendrajit Singh and Another Vs. The State of U.P. and Another*, . The *Narendrajit Singh*'s case was considered, relied upon and followed by their Lordships in *Mohd. Shafi*'s case (*supra*).

First I advert to the decision in *Narendrajit Singh* (*supra*). Since there is a dispute raised by learned counsel for the petitioner which notification as a matter of fact was quashed as vague in *Narendrajit Singh*'s case (*supra*) whether it was the notification quoted in para 13 of *Mohd. Shafi*'s case (*supra*) from the report of *Narendrajit Singh*'s case (*supra*), or the notification which was mentioned in para 2 of the *Narendrajit Singh*'s case (*supra*). In *Narendrajit Singh*'s case (*supra*) their Lordships of the Supreme Court in the main judgment have quoted two notifications which were issued in the case of *Narendrajit Singh*'s (*supra*) in para 2, their Lordships referred to the notification issued u/s 4. Para 2 of the *Narendrajit Singh*'s case (*supra*) which contains a notification part also which was held to be vague, is quoted below:

"2. The facts relevant for the disposal of the appeals are as follows. On October 15, 1960 the Government of Uttar Pradesh issued, a notification purporting to be one u/s 4(1) of the Land Acquisition Act, 1894 to the effect that "the land mentioned in the schedule is needed for a public purpose". The notification further showed that "the Governor being of opinion that the provisions of sub-section (1) of section 17 of the said Act are applicable to the land, is further pleased under sub-section (4) of the said section to direct that the provisions of section 5A of the Act shall not apply". The schedule to the notification reads as follows:

District

Pargana

Mauza

Approximate area

For what purpose required.

For the rehabilitation of displaced families from East Pakistan, under the Ministry of Rehabilitation, Government of India

Note. - The plan of the land may be inspected in the office of the Collector, Rampur."

In para 4 of Narendrajit Singh's case (supra) their Lordships of the Apex Court quoted the notification issued under Sub-section (1) of section 17 to take possession of the land. The relevant portion of para 4 of Narendrajit Singh's case (supra) is quoted below:

"4. The case being one of urgency the Governor was further pleased under sub-section (1) of section 17 of the Act to direct the Collector of Rampur, though no award u/s 11 has been made, on the expiration of the notice mentioned in sub-section (1) of section 9, to take possession of the land, being waste or arable land mentioned in the schedule for a public purpose..

SCHEDULE

District

Paragana

Mauza

Approximate area

For what purpose Remarks

Bilaspur

GokalNagri

125 acres

For the rehabilitation of East Pakistan displaced families under the Ministry of Rehabilitation, Government of India

There Lordships of the Supreme Court in para 8 of Narendrajit Singh's case (supra) dealt with the notification extracted from para 2 of the report from SCC. Para 8 of the Narendrajit Singh's (supra) is quoted below:

"8. section 4(1) does not require that the identity of the lands which may ultimately be acquired should be specified but it enjoins upon the Government the duty to specify the locality in which the lands is needed. In the instant case the notifications suffer from a very serious defect in that the locality where the

lands were needed was not specified. The notification merely showed that lands mentioned in the schedule were needed. The schedule in its turn though it contained the headings District, Paragana, Mauza and approximate area, gave no particulars of the same and all that was mentioned by way of a note was that the plan of the land might be inspected in the office of the Collector of Rampur. As no details were given, the only indication about the locality of the lands was possibly the District of Rampur inasmuch as the plan of the land was to be found in the office of the Collector of the same district. Certainly the Act did not intend that all the persons owning land in a district should rush to the Collector's office to find out whether his lands were covered by the notification."

Their Lordships in Narendrajit Singh's case (supra) clearly laid down that section 4(2) does not require that the identity of the land which may ultimately be required should be specified, but, it enjoins upon the Government the duty to specify the locality in which the land is needed. In Narendrajit Singh's case (s) in para 2 which the notification issued u/s 4 Paragana place of the district was not mentioned, Mouza was not mentioned, approximate area was also not mentioned, only mention was to the public purpose and note was appended the plan of the land may be inspected in the office of the Collector, Rampur. Thus, what their Lordship considered in para 8 was the notification quoted in para 2, not in para 4 of Narendrajit Singh's case (supra). The notification in para 2 which was the only notification u/s 4 was held to be vague and was quashed.

Learned counsel for the petitioner is not right in his submission that the notification mentioned in para 4 which is quoted in para 13 of Mohd. Shafi's case (supra) as the notification u/s 4 was quashed. Para 13 of the Mohd. Shafi's case (supra) is quoted in extenso:

"13. In Narendrajit Singh vs. State of U.P., while dealing with the requirements of a valid notification u/s 4 of the Act, this Court observed that the defect of non-mention of the locality where the proposed land was situate in the notification was a very serious defect vitiating the notification. In that case, the schedule attached to the notification issued u/s 4(1) and 17(1) of the Act read as follows:

SCHEDULE

District

Paragana

Mouza

Approximate area

For what purpose Remark

Rampur

Bilaspur

GokalNagri

125 acres

For the rehabilitation of East Pakistan displaced families under the Ministry of Rehabilitation, Government of India.

This Court opined that though section 4(1) does not require the identity of the land which may ultimately be acquired to be specified with too many details but it undoubtedly casts upon the government a duty to "specify the locality in which the land is needed". In Narendrajit Singh case, this Court also repelled the argument identical to the one raised by Mr. Thakur that since detailed particulars of the land had been given in the notification issued u/s 6(1) of the Act, the absence of those particulars in section 4(1) notification was of no consequence. The Court said:

"In our view the defect in a notification under section 4(1) cannot be cured by giving full particulars in the notification u/s 6(1)."

It is clear that in Mohd. Shafi's case the notification which has been quoted from Narendrajit Singh's case (supra) was not the notification issued u/s 4. The notification which was issued u/s 4 has not been quoted from Para 2 of Narendrajit Singh's case (supra) in para 13 of Mohd. Shafi's case the quoting is of the notification issued under sub-section (1) to section 17 which was not commented upon or quashed by their Lordship in Narendrajit Singh's case (supra) in para 8 of report of Narendrajit Singh (supra) quoted above. Thus, the submission of the learned counsel for the petitioner that the notification quoted in para 13 of Mohd. Shafi's case was quashed by their Lordships in Narendrajit Singh's case (supra) is not acceptable as submission is contrary to the facts and the main judgment in Narendrajit Singh's case (supra). Even in the case of Mohd. Shafi's case their Lordships nowhere deferred from the decision of Narendrajit Singh's case (supra) in para 13 quoted above, their Lordships have relied upon Narendrajit Singh's case (supra) and relied upon the observation that "this Court opined that though section 4(1) does not require the identity of the land which may ultimately be acquired to be specified with too many details but it undoubtedly casts upon the government a duty to "specify the locality in which the land is needed". Thus, Mohd. Shafi's case also it has been clearly laid down that too many details have not to be given in notification u/s 4 identity of the land has not to be specified. But, need is only to specify the locality. In the case of Mohd. Shafi's (supra) the notification which came to be considered by their Lordships of the Supreme Court was quoted in para 2 of the report of SCC. Para 2 is quoted below:

"2. The schedule to the notification provided as follows:

"SCHEDULE"

Particulars of land

Distt.

Tahsil

City Approximate area in hectares

Authorised Officer u/s 4(2)

Details of public purpose

(1)

(2)

(3)

(4)

(5)

(6)

Mandsaur

Mandsaur

Mandsaur

229

Executive Engineer M.P. Housing Construction

Residential

In para 11 of Mohd. Shafi's case (supra) the reasons are mentioned for quashing the notification. Para 11 is quoted below:

"11. The High Court found that Mandsaur is no more a small village but a big city, which is divided into 35 municipal wards having a population of more than 80,000 people and is spread over an area of 25 sq. kms. and the absence of the details of the land or the locality where the same is situate, vitiates the notification for non-compliance with the provisions of the Act."

Since the Mandsaur is a District place itself and was divided in 35 municipal wards having a population of more than 80,000 people and is spread over an area of 25 sq. kms., their Lordships observed in para 12 that the description of the land in the notification issued under sections 4(1) and 17(1), is very cryptic. Not only no khasra numbers have been given, even the precise "locality" has not been indicated. Mere mention of "Mandsaur", which is spread over an area of 25 sq. kms. and is divided into various municipal wards, against the "locality" is wholly insufficient description. Para 12 of Mohd. Shafi (supra) which is relevant is quoted below:

"12. The description of the land in the notification issued under sections 4(1) and 17(1), in our opinion, is very cryptic. Not only no khasra numbers have been given, even the precise "locality" has not been indicated. Mere mention of

Mandsaur, which is spread over an area of 25 sq. kms. and is divided into various municipal wards, against the "locality" is wholly insufficient description and the respondent or anyone else could not have come to know from that description whether 2.298 hectares of land which was required for acquisition included the land belonging to him or not. The non-disclosure of the "locality" with precision, invalidates the notification and renders the publication of notice a meaningless formality."

Their Lordships have discussed simply the fact that there was non disclosure of the "locality" with precision, since Mandsaur was a big area and a district headquarters. Their Lordships have further held in para 13 quoted above that the identity is not to be mentioned and to many details are not to be given is the ratio of Mohd. Shafi's case (supra) as well as the case of Narendrajit Singh's (supra). It has not been laid down that khasra numbers are required to be mentioned in notification u/s 4. In Mohd. Shafi's case supra the notification was held to be vague and other particulars were also not mentioned about the District, Tehsil, Mouza and no other particulars were also given.

In Abdul Jabbar vs. State of West Bengal, ILR (1967) Cal 157 it was held that the notification u/s 4 is merely exploratory or preliminary in nature and the exact area to be acquired need not be particularized at that stage; but it is otherwise with the declaration u/s 6 which is issued after the Government has applied its mind to the exact area and location of the lands which are needed for the purpose of and are, therefore, acquired. What is to be emphasized the land need not to be particularised in declaration u/s 4.

A Division Bench of Delhi High Court in Raj Kumar and anr. vs. The Union of India and ors., ILR (1974) Del 81 held that at the stage of notification u/s 4(1) it is not absolutely necessary that Government should have particularised the land.

In Bahadur Singh vs. Union of India, ILR (1976) I Del 375 it was laid down in para 68 that it is not necessary that each and every item of the land should be mentioned in the notification u/s 4 which means that survey numbers are not required to be mentioned.

A Division Bench of Allahabad High Court in Chandan Singh Gosain Vs. State of U.P. and Another, following the decision of Narendrajit Singh's case held that plot numbers and other details are not necessary to be mentioned in the notification issued u/s 4 of the Act. Only the locality is to be mentioned which by very purpose of section 4 can be mentioned.

A Division Bench of Calcutta High Court in Jogendra Nath Chatterjee and Others Vs. State of West Bengal, held that neither the plots nor their boundary has to be specified in notification u/s 4(1), but, the locality must be stated.

In Nagar Mahapalika, Varanasi Vs. Durga Shankar and Others, a Division Bench of Allahabad High Court held that when the notification u/s 4(1) did not mention the details about the purpose of the plots or their boundaries, the notification

could not be held to be vague as other sufficient particulars were mentioned.

In *Bai Malimabu and Others Vs. State of Gujarat and Others*, it was held that when the land is mentioned that includes super-structure, it is not the requirement of law to mention the structure if any in the notification u/s 4.

In *Babu Singh and Others Vs. Union of India (UOI) and Others*, their Lordships held that the statement of public purpose u/s 4(1) notification is more comprehensive setting out details of improvement works, while the one set out u/s 6(1) notification is more precise and restricted in terms. u/s 4 broad and understandable statement has to be made of public purpose.

In my considered opinion, in the instant case, the notification cannot be said to be vague as Ratanpur Sadak is small village. It is not the case of the petitioner that the small village is having the names of various locality Tehsil "Huzur", district "Bhopal" of locality "Ratanpur Sadak" was mentioned area was also mentioned and the map could be seen in the Collector Office, thus, the notification issued u/s 4 does not suffer from infirmity of vagueness. It mentions the locality clearly.

Next submission raised by learned counsel for the petitioner is that acquisition of the land contrary to the Bhopal Development Plan, as such he land acquisition for construction of by-pass is illegal. Learned counsel has. relied on the decision of the Supreme Court in *State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc.*, , in which acquisition for the purpose of housing Board. Their Lordships held that section 4 of the Land Acquisition Act does not state expressly or by necessary intendment that before a notification is issued/published thereunder proposing to acquire land for the purpose of a body like the Tamil Nadu Housing Board, a duly published final scheme prepared in accordance with the relevant Act should be in force. Their Lordship observed that the duty of the Housing Board is not over. It can carry out certain other scheme also. In that case the Housing Board was carrying the scheme. It was held by their Lordship that there appears to be no warrant for qualifying the plenary power u/s 4 of the Land Acquisition Act in reference to the said provision of the Housing Board Act i.e. sections 37 to 56.

The submission raised by learned counsel is further put to rest by the decision of the Supreme Court is *S.S. Darshan Vs. State of Karnataka and others*, , in para 11 the Apex Court held that the notification u/s 4 cannot be challenged on the ground that purpose of acquisition is different than permitted land use under master plan is not tenable. Para 11 is quoted below:

"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 provisions of the Land Acquisition Act, 1894. This argument also had no merit."

Thus, I find no merit in the submission of the learned counsel that there is violation of master plan while acquiring the land u/s 4. On facts also in the instant case, it has been disputed by the respondents that the master plan has been violated in the instant case.

A similar contention was raised in *Laxmi Bai Tiwari and ors. vs. State of M.P.*, W.P. 6592/2000 decided on 21-9-2001 when construction of Satna by-pass was undertaken. Submission was not accepted by this Court.

In the instant case, the town and country planning department has given the NOC and acquisition u/s 4 cannot be said to be invalid of the basis of the submission advanced by learned counsel for the petitioner.

The next submission raised by learned counsel for the petitioner is that the Commissioner did not apply the mind while according sanction to invoke urgency clause u/s 17.

In the instant case, acquisition is for construction of by-pass which is a public purpose of urgent nature. Thus, invocation of urgency clause by the Commissioner while granting sanction cannot be said to be suffering with nonapplication of mind. Primarily there is no foundation for the submission that the urgency was not there, submission is not sustainable in similar circumstances such an argument was repelled by Apex Court in *S.S. Darshan v. State of Karnataka* (supra) in para 8 of report in AIR.

In *Bhagat Singh Vs. State of U.P. and Others*, , the question came up for consideration regarding invocation of urgency clause where the new market yard was proposed to be constructed in place of old which was located in congested locality. It was held by their Lordship that invocation of urgency clause is a subjective satisfaction on consideration of the purpose which is involved in the instant case, I am satisfied that it is the urgent cause, for which the land is being acquired. The land acquisition officer has clearly mentioned that the fact of urgency in the note-sheet, Annexure-RA/2. The construction of bypass was sanctioned by high power committee as a "pilot project" and was to be completed during the time bound frame. HUDCO has sanctioned the loan at the rate of 13% per annum of Rs. 89.50 crores and project was in collaboration with the foreign country; Spain, contractors were also identified. Government of Madhya Pradesh, Department of PWD had sanctioned it administratively and it was found to be necessary to prevent the congestion in the capital as apparent from RA/3, the certificate of Executive Engineer, PWD, the sanction of loan by HUDCO is supported by RA/4. The minutes of the high power committee meeting held by the Chief Secretary are RA/4. In RA/5, document, the Commissioner had clearly mentioned that there is urgency. The Commissioner had applied the mind as earlier proposal included 124.51 acres land. There was clerical error. Thereafter revised proposal was for 156.46 acres which was sanctioned by the Commissioner, who is appropriate competent authority and it sanctioned the invocation of urgency clause u/s 17. No objection granted by the

Joint Director, Town and Country Planning is RA/6. Thereafter the notification was issued on 19-10-2000 u/s 4(1) clearly mentions that provision u/s 17(1) was invoked as such. Enquiry u/s 5A was dispensed with.

Learned counsel has relied on a decision of the Supreme Court in Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, Learned counsel submits that the decision was not taken u/s 17(4) as such enquiry u/s 5A has to be conducted. In the instant case, various proceedings indicates that enquiry was proposed to be dispensed with and the Commissioner had clearly sanctioned the proposal. In the notification, it is clearly mentioned that the enquiry u/s 5A has been.

In the case of urgency firstly there is presumption attached to the official act as held by the Supreme Court in Rai Bahadur Ganga Bishnu Swaika and Others Vs. Calcutta Pinjrapole Society and Others, . Their Lordship considered section 6 and held that there being no statutory forms and section 6 not and held that there being no statutory forms and section 6 not requiring the declaration to be made in any particular form, the mere fact that the notification issued u/s 6 does not ex facie show the Government's satisfaction, assuming that the words "it appears" used in the notification do not mean satisfaction would not render the notification invalid or not in conformity with section 6. Their Lordship further held that it is subject matter of evidence that it was satisfied as required u/s 6. The fact that section 5A enquiry was held, objections were filed and heard and the fact that the Additional Collector had recommended the clause and had sent his report to that effect and Government thereafter issued section 6 notification is in the absence of any evidence to the contrary show that condition precedent as to the satisfaction was fulfilled.

In Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another, the question arose about the satisfaction of Government on the question of urgency. It was held that not only the protection under Article 166(2), but, there was also the presumption of regularity of the official act.

In Sanjai Gandhi Grah Nirman Sahkari Sanstha Maryadit Vs. State of M.P. and Others, it was observed that the court cannot sit on the satisfaction of the authority. The case involved construction of ring road. In para 28 the following observations were made:

"28. One of the petitioners has also raised an objection about the publication u/s 17(1) of the Land Acquisition Act and has challenged the urgency for acquisition of the land. Now it is not disputed that a ring road is urgently needed for the fast expanding city of Indore and without a ring road the traffic in the City is already congested and people are suffering with the pollution caused due to the congestion in the traffic. A Division Bench of this Court in the case of Chandmal and Others Vs. State of M.P. and Others, had in the case of acquisition of land for setting up of Industrial Estates in backward districts had held that waiving of section 5A in a case of urgency is valid if there is no colourable exercise of power

by the government. In the instant case none of the petitioners is in a position to show that the proposed acquisition is mala fide or is a colourable exercise of power. The action cannot also be held to be arbitrary. Therefore being in respectful agreement with the judgment in Chandmal's (supra) we hold that the action of the Government invoking section 17(1) of the Land Acquisition Act is proper and justified."

In my opinion, once it was mentioned in the notification that enquiry u/s 5A was dispensed with, it was not further necessary to have mentioned the section 17(4) in the notification issued u/s 4.

Learned counsel for the petitioner has further submitted that the mind should be applied as to the urgency. He placed reliance in Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, As already mentioned above in the instant case there was urgency. Facts were there before the authority about the urgency of the nature. The project is funded by foreign Government and is taken as a pilot project and has to be completed on time bound basis. The construction of bypass cannot brook any delay.

Learned counsel has pressed into service the decision in State of Punjab and Another Vs. Gurdial Singh and Others, in that case enquiry of urgency power u/s 17 was held improper on the ground that the project was pending for several years, then suddenly, power u/s 17 was invoked, which is not the fact situation obtainable in the instant case.

In Chandramani Sahu and Others Vs. State of Orissa and Others, it was held that the urgency has to be established, which has been established in the instant case.

In Gurnam Singh and others Vs. State of Punjab and another, which is also pressed into service by the petitioner, it was held that the urgency is a matter of subjective satisfaction. The decision does not advance the cause espoused by the petitioners.

Learned counsel for the petitioner has also submitted that initially proposal was for acquisition of 124.51 acres. It was revised to 156.46 acres before issuance of notification u/s 4. It is an illegal and mala fide act with a view to acquire the petitioner's land. In the instant case it has been established by respondents that as in the previous alignment several residential houses were falling and objection was raised by the Town and Country Planning department, thus, the revised plan was submitted for acquisition of 156.46 acres which cannot be said to be an illegal or a mala fide act. Notification u/s 4 was issued for 156.56 acres, which was sanctioned by the Commissioner and the notification was issued for same area.

The Supreme Court in State of Tamil Nadu vs. Mahalakshmi Ammal, AIR 1996 SC 866 held that even if some survey was left to be included in section 4 notification, that cannot make the notification invalid and errata can be published later on which can relate back to the initial date. In the instant case the variation

was made before issuance of notification u/s 4 itself, which cannot be said to be bad in law.

In Delhi Administration Vs. Gurdip Singh Uban and Others, it has been held that satisfaction can be justified if it exists on record. Government need not refer it with every piece of particular land and declaration u/s 6 is enough.

In W.P. No. 85/2001 question is raised that certain temples were destroyed, this fact is denied in the return, being disputed question of fact, it cannot be gone into in the present writ petition.

Resultantly, there is no merit in the writ petitions, they are dismissed. Costs on parties.