
(2010) 06 P&H CK 0019
In the Punjab And Haryana At Chandigarh

Jagtar Singh and Another	Vs	APPELLANT
State of Haryana and Another		RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 17, 23, 4, 48, 5A

Citation : (2010) 2 ILR (P&H) 1011 : (2010) 3 RCR(Civil) 34102

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The State of Haryana desired to setup a Sewerage Treatment Plant at Village Samalkha, District Panipat. At the first instance a notification u/s 4 read with Section 17(2)(c) of the Land Acquisition Act, 1894 (for brevity, "the Act") was issued on 16.11.2006 (P-1), expressing the intention to acquire land for the aforesaid public purpose comprised in specified khasra numbers, which are clear from the following table:

?District

Tehsil

Village

Hadbast No.

Rect. No.

KhasraNo.

Area Kanal Marla

1.

2.

1.

2.

3.

4.

5.

Panipat

Samalkha

Samalkha

77

52

20/1

1

12

20/2

1

17

20/3

1

14

21/1

1

19

21/2

4

14

29

5

0

61

1

6

12

9/1

1

16

9/2

6

4

10

5

16

11/2

4

18

12

8

0

19

7

3

20/1

4

2

26

0

16

Killa 15

62

3?

2. On 28.12.2006, a declaration u/s 6 read with Section 17(1) was made with regard to the aforesaid khasra numbers stating that the land is urgently required

by the Government for a public purpose of setting up a Sewerage Treatment Plant. However, the Chief Minister, Haryana, did not deem it appropriate to set up the Sewerage Treatment Plant inside the abadi area, as is evident from the letter dated 4.1.2008 (P-4), sent by the Financial Commissioner and Principal Secretary to Government Haryana, PWD (Water Supply and Sanitation). In para 2 of the said letter it has been recorded that "Hon "ble Chief Minister has seen. He is of the opinion that treatment plant inside the abadi area would not be appropriate. He has desired that some other suitable site be located by the Department for sewerage treatment plant". Therefore, on 8.4.2008 (P-5), a notification u/s 48 of the Act was issued dropping the acquisition proceedings in respect of the land, which was sought to be acquired vide notification dated 16.11.2006 (P-1) u/s 4 read with Section 17(2)(c) of the Act and declaration dated 28.12.2006 (P-2), made u/s 6 read with Section 17 of the Act. Accordingly, the notification dated 8.4.2008 (P-5) brought an end to the acquisition of the specified land. The de-notification in such a manner and further proceedings for acquisition may have bearing for invoking of urgency clause.

3. However, on 9.5.2008 (P-6) again a notification was issued u/s 4 read with Section 17(2)(c) of the Act for the same public purpose of setting up a Sewerage Treatment Plant at Village Samalkha, District Panipat. This time land measuring 48 Kanals 8 Marlas was sought to be acquired and the specified khasra numbers were notified. The table of khasra numbers, as shown in the notification is as under:

?Rectangle No.

Khasra No.

Area of Land

Kanal

Marla

52

21-1/1

0

12

21-2/1

2

00

61

1/1

2
00
10-2
2
00
11/1
2
00
20-1/2
2
00
21-2/1
2
00
67
1-2/1
2
00
8
8
00
9
9
10
12
8
12
13
7
01

26

0

13

48

8

Total = 6 Acres 8 Marlas?

4. The notification was published in the "Dainik Tribune" on 21.5.2008. Further, a declaration u/s 6 read with Section 17(1) was made on 12.9.2008, which was published in the newspapers on 26.9.2008. The award was announced on 25.6.2009. The possession of the land was allegedly taken only on 17.7.2009 (R-2).

5. The petitioners challenged the notification dated 9.5.2008 and declaration dated 12.9.2008, issued under Sections 4 and 6 of the Act, claiming that they are owner in possession of the land measuring approximately 33 Kanals 3 Marlas, comprised in Rect. No. 67, Khasra Nos. 8, 9, 12 and 13 in Village Samalkha, Tehsil Samalkha and District Panipat. It has also been claimed that their land is situated next to the area which was sought to be acquired earlier by issuing notification dated 16.11.2006 (P-1) and declaration dated 28.12.2006 (P-2). Consequently, it has been asserted that if the earlier land in the opinion of the Government and the Chief Minister was not suitable for setting up of a Sewerage Treatment Plant then how the land sought to be acquired later, which is adjacent to the area of the earlier proposal, would be suitable for the same public purpose. The petitioners have also claimed that their valuable right flowing from Section 5A of the Act of filing objections has been taken away without any application of mind. It has also been pointed out that there was no real urgency and 30 days time could easily be given for filing objections as the notification u/s 4 of the Act was issued on 9.5.2008 and declaration was made on 12.9.2008 after more than 4 months. It has also been claimed by the petitioners that they were not aware of the declaration made u/s 6 of the Act on 12.9.2008 (P-7) and came to know only when they received notice u/s 9 of the Act on 5.6.2009 (P-8).

6. In reply to the notice of motion, on behalf of respondent No. 1 written statement has been filed by the Executive Engineer, Public Health Engineering Division No. 2, Panipat. The broad factual position of issuing first set of notification dated 16.11.2006 and declaration dated 28.12.2006 (P-1 & P-2) under Sections 4 and 6 read with Section 17 of the Act, have been admitted. It has also not been disputed that thereafter notification dated 9.5.2008 and declaration dated 12.9.2008 under Sections 4 read with Section 17(2)(c) and Section 6 read with Section 17(1) of the Act were also issued. The respondents have further explained that the petitioner Jagtar Singh and others did not accept the amount of compensation and challenged the notifications by filing the instant petition. While issuing notice of motion for 15.9.2009, the Division Bench refused

to grant stay, vide order dated 3.7.2009. It has been claimed that the possession of the land in question was taken on 17.7.2009 and the writ petitioners approached Hon''ble the Supreme Court against the order refusing to grant stay, dated 3.7.2009. Hon''ble the Supreme Court in the presence of respondents on 21.7.2009 passed an order staying the dispossession of the petitioners from the land in question. The SLP was disposed of on 22.2.20 10 and it was desired that this High Court may make endeavour to dispose of the writ petition at the earliest.

7. The respondents have claimed that it is a time bound project and the State Government has found the land in question most suitable for setting up the Sewerage Treatment Plant. In para 2 of the preliminary objections to the written statement filed by respondent No. 1 it has been pleaded that the land is just touching the drain, which is needed for disposal of treated effluent water, that is to be supplied for agricultural purposes. The land is situated at a suitable distance from the abadi area and that it would not be in public interest to acquire the land ahead of the land of the petitioners because there is a running Nestle Milk Plant, which is about 250 meters away from the present land. The respondents have also pleaded other problems regarding disposal, time limit for completion of project and finance. Their categorical case is that if the State is to acquire some other site then it would increase the cost of the project and it is most suitable for establishing Sewerage Treatment Plant.

8. Respondent No. 2 has filed a separate written statement with no additional facts.

9. In reply to the written statement filed by respondent No. 1, the petitioners have filed replication disclosing that earlier notification u/s 4 and declaration u/s 6 of the Act, dated 16.11.2006 and 28.12.2006 (P-1 & P-2 respectively) were withdrawn by letter dated 4.1.2008 (P-4). It is alleged that notification u/s 48 of the Act, dated 8.4.2008 (P-5) was issued on extraneous consideration and the non-suitability of the aforesaid land for establishing treatment plant was merely a ruse. The petitioners have obtained information under the Right to Information Act, 2005, showing that the land belonging to one Shri Dayanand, who was the owner of the earlier land, was ordered to be released from acquisition because suitable land belonging to the Gram Panchayat was available in the area. The aforesaid fact has been revealed by the noting dated 28.3.2007 made by the Chief Minister (P- 10) on an application filed by earlier landlord Shri Dayanand. The noting made on behalf of the Chief Minister by his Personal Secretary reads as under:

P.A. Circle, Karnal.

Submitted before the Chief Minister. He has directed that when Panchayat land is available there, then what is the need to acquire the land of any agriculturist. He be immediately informed about the factual position.

Sd/- Ram Mehar Sharma 28.3.07. Personal Secretary to Chief Minister. APSCM-II

10. One of the principal grounds pleaded by Shri Dayanand, which appears to have prevailed upon for release of his land from acquisition, is that he had orchard on his land, which is beneficial for the environment. The aforesaid fact is clear from reading of para 4 of the application (P-10). The aforesaid ground including other grounds raised by Shri Dayanand, were found to be factually incorrect and there could not be any notification issued u/s 48 of the Act. The department, therefore, never recommended that the land of Shri Dayanand be released (P-11).

11. The petitioners also raised another issue that notification u/s 4 of the Act, dated 9.5.2008, which is challenged in the instant petition, was published in the "Dainik Tribune" on 21.5.2008 and it has never been published in any other vernacular newspaper, which is mandatory u/s 4 of the Act. The public notice by way of munadi was published on 19.8.2008 and it has not been made within a reasonable time. A true copy of the Rapat Roznamcha making entry of munadi on 19.8.2008, has been placed on record (P-12). Likewise, the public notice with regard to declaration made u/s 6 on 12.9.2008, was published by way of munadi in the local area on 9.5.2009. It has been categorically denied that the possession of the land belonging to the petitioners was taken on 17.7.2009, especially when their dispossession has been stayed by Hon'ble the Supreme Court on 21.7.2009 (P-13), despite the claim made by the respondents regarding their dispossession. The petitioners have pleaded the following facts to show that the possession of the land in question is still with them:

(i) On 23.7.2009, the petitioners submitted a representation to the Tehsildar, Samalkha, to call for a report about the status of the crop sown on the fields belonging to them. On 24.7.2009, the Tehsildar gave the report that there were standing crops on the field of the petitioners (P-14).

(ii) On 22.7.2009, the President, Municipal Committee, Samalkha, made a statement to the effect that the petitioners were in possession of the land in question as on 22.7.2009. A similar statement was also made by the Vice-President of the Municipal Committee, Samalkha (P-15 Colly).

(iii) The petitioners have also placed on record photographs of the land in question along with the bill of the Photographer, which were taken on 22.7.2009 and 22.10.2009 (P16 and P-17 Colly).

(iv) In the award dated 25.6.2009 (P-18) it has been mentioned that the possession of the land of the petitioners was to be delivered to the respondents after the harvesting of the crop of Khariff 2009.

12. The petitioners also controverted various averments made in the preliminary submissions and claimed that shamlat land was available, as is shown in Annexure R-3. Once the land of Shri Dayanand has not been found to be suitable how the land belonging to another agriculturist like the petitioners, which is adjacent the land of Shri Dayanand as per site plan Annexure R-3, could be considered suitable.

13. We have heard learned Counsel for the parties.

14. Mr. Rahul Sharma, learned Counsel for the petitioners has firstly submitted that there is no urgency shown by the Government in acquisition of land. According to the learned Counsel once there is a delay of more than four months between the notification issued u/s 4 read with Section 17(2)(c) and declaration u/s 6 read with Section 17(1) of the Act then 30 days time could have easily been granted for holding an inquiry into objections filed u/s 5A of the Act. He has also pointed out that munadi of notification issued u/s 4 read with Section 17(2) (c) of the Act was made on 19.8.2008 and then munadi in respect of declaration made on 12.9.2008 was made after about 8 months on 9.5.2009. Mr. Sharma has further argued that right to file objections u/s 5A of the Act cannot be taken away automatically by merely issuing notification u/s 4 read with Section 17(2) (c) of the Act. According to the learned Counsel there has to be independent and objective application of mind by the competent authority that there is such an urgency, which would not brook delay of even 30 days. Learned Counsel has maintained that no such satisfaction or objective analysis has been made by the respondent Government. In support of his submission, he has placed reliance on the judgments of Hon"ble the Supreme Court rendered in the cases of Union of India (UOI) and Others Vs. Mukesh Hans etc., and Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, .

15. The other submission of the learned Counsel is that the acquisition has been made on extraneous consideration. According to Mr. Sharma, if the land belonging to Shri Dayanand, as depicted in site plan Annexure R-3, has been released by issuing notification u/s 48 of the Act (P-5), which is adjacent to the land of the petitioners, on the ground that it is not suitable for setting up a Sewerage Treatment Plant then how the next parcel of land belonging to the petitioners would be suitable as their land is also in abadi. He has substantiated his argument by submitting that as a matter of fact the land belonging to Shri Dayanand was released by the order of the Chief Minister on 28.3 .2007 stating that the Panchayat land was available and, therefore, no land belonging to the agriculturist should have been acquired. Mr. Sharma states that it is most arbitrary and violative of Article 14 of the Constitution.

16. Mr. Kamal Sehgal, learned State counsel has submitted that setting up of Sewerage Treatment Plant is a public purpose which would justify invoking of urgency provision as contemplated by Section 17(2)(c) of the Act. Controverting the arguments of the petitioners, Mr. Sehgal has submitted that the judgments of Hon"ble the Supreme Court rendered in the case of Mukesh Hans (supra) and Essco Fabs Private Limited (supra) would not apply in cases where the public purpose is of urgency. He has placed reliance on a judgment of Hon"ble the Supreme Court rendered in the case of Sheikhar Hotels Gulmohar Enclave v. State of Uttar Pradesh (2008) 14 SCC 716, where the public purpose of construction of road was in question and their Lordships" has upheld the notification issued u/s 4 read with Section 17(4) and Section 6 read with Section

17(1) of the Act. Learned Counsel has also submitted that symbolic or notional possession are sufficient without there being physical possession, as has been held by Hon''ble the Supreme Court in the case of Sita Ram Bhandar Society, New Delhi Vs. Lt. Governor, Govt. of N.C.T. Delhi and Others, .

17. In so far as the allegations of extraneous considerations are concerned, Mr. Sehgal has argued that mala fide could arise on two counts - (i) it is for the petitioners to show that the impugned action has been taken with the object of damaging interest of aggrieved party; and (ii) such action is aimed at helping another party. According to the learned Counsel mere allegations of mala fide are not enough by merely stating that the original location of the proposed construction was deliberately changed to help important person whose land would have been otherwise acquired under the original proposal, especially when the de-notified land belongs to a person who has no position or power. In that regard, learned Counsel has placed reliance on the judgment of Hon''ble the Supreme Court rendered in the case of Girias Investment Private Limited v. State of Karnataka (2008) 7 SCC 53.

18. We have summoned the original record and perused the same.

19. Having heard learned Counsel for the parties at a considerable length and perusal of record with their able assistance, we feel that it would be first necessary to analyse why the land sought to be acquired by notification dated 16.11.2006 (P-1) and declaration dated 28.12.2006 (P-2) was de-notified u/s 48 of the Act, vide notification dated 8.4.2008 (P-5). It is evident from letter dated 4.1.2008 (P-4), that the Chief Minister was of the opinion that treatment plant inside the abadi area was not an appropriate option and he had desired that other suitable site be located by the department for setting up of Sewerage Treatment Plant. The other reason disclosed by the petitioners in their replication is evident from the noting dated 28.3.2007 made on behalf of the Chief Minister on the application of Shri Dayanand. According to the aforesaid note, the Panchayat land was available and no land belonging to any agriculturist was needed to acquire. The note is signed by Shri Ram Mehar Sharma, Personal Secretary to Chief Minister, which was received by the petitioners under the Right to Information Act, 2005.

20. A close analysis of these two reasons leads us to conclude that the land falling in abadi area was not to be acquired and the land known as "shamlat deh" belonging to the Gram Panchayat was available, which should have been acquired. However, the respondents in contradiction of both the reasons proceeded to acquire the adjacent land belonging to the petitioners. It is appropriate to mention that the land belonging to the petitioners is comprised in Rect. No. 67, Khasra Nos. 8, 9, 12 and 13, whereas the earlier proposal was for acquisition of land comprised in Rect. Nos. 52 and 61. A glance at the site plan Annexure R-3 would show that the land proposed to be acquired earlier belonging to Shri Dayanand is adjacent to the land belonging to the petitioners, which is sought to be acquired now. Both the parcels of land are in abadi area

and there is no explanation except higher expenditure and timing of the project. The shamlat land that could have been acquired is also shown in the site plan (R-3).

21. It is now well settled that if the land belonging to a similar situated person is released in preference to the land of another citizen then it is imperative for the Courts to interfere lest the citizen are left with the impression that those who have close connection could succeed in getting their land released, which has been found to be violative of Article 14 of the Constitution. In that regard reliance may be placed on a recent judgment of Hon''ble the Supreme Court rendered in the case of Hari Ram and Another Vs. State of Haryana and Others, . After advertng to some instances where the land was released and similar situated owner was not granted the relief, their Lordships" of Hon''ble the Supreme Court has indicted the respondent State of Haryana in severest terms as under:

26. ...The policy articulated in the Letter dated 26.6.1991, thus, hardly helps the respondents. Rather it is seen that neither the aforesaid policy nor any other policy has been followed by the State Government while releasing land of various landowners whose lands have been acquired in the same acquisition proceedings. As a matter of fact, the only policy that seems to have been followed is: "you show me the face and I'll show you the rule.

22. The matter does not end there. Hon''ble the Supreme Court also recorded its concern in respect of those land owners who have not been granted relief, by observing in the following words:

43. It is unfair on the part of the State Government in not considering representations of the appellants by applying the same standards which were applied to other landowners while withdrawing from acquisition of their land under the same acquisition proceedings. If this Court does not correct the wrong action of the State Government, it may leave citizens with the belief that what counts for the citizens is right contacts with right persons in the State Government and that judicial proceedings are not efficacious. The action of State Government in treating the present appellants differently although they are situated similar to the landowners whose lands have been released can not be countenanced and has to be declared bad in law.

23. We are further of the view that once shamlat deh land belonging to the Gram Panchayat was available as per the observation of the Chief Minister in his note dated 28.3.2007 then there was no justification for acquiring the agricultural land, which has standing crops. It appears to be well settled that once Banjar Quadim land or any other land of non-fertile nature is available then agricultural land belonging to the agriculturist should not be ordinarily acquired.

24. We also feel persuaded by the other argument raised by Mr. Sharma that there is no independent application of mind by the competent authority to acquire the land by dispensing with inquiry u/s 5A of the Act. A perusal of the

original record (in loose pages) produced before us does not show any decision of the Government to dispense with the enquiry contemplated by Section 5A of the Act. It is well known that the right of hearing contemplated by Section 5A of the Act is a right akin to fundamental right, as has been held by Hon''ble the Supreme Court in the case of Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, . It is equally well settled that the Land Acquisition Act, which is an expropriatory legislation, has to be construed strictly. In the aforesaid background the argument concerning lack of application of mind by the competent authority for dispensing with Section 5A of the Act needs to be examined. It would be appropriate to analyse the provisions of Section 17(4) of the Act, which reads thus:

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 do 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).

25. The aforesaid provision clearly spells out that the appropriate Government is under an obligation to take an express and a conscious decision that provisions of Section 5A are not to apply and it is thereafter that declaration u/s 6 could be issued at any time after the publication of the notification u/s 4(1) of the Act. The aforesaid provision came up for interpretation of their Lordships of Hon''ble the Supreme Court in the case of Mukesh Hans (supra). The principle enunciated by their Lordships'' is discernible from para 32 of the judgment, which reads thus:

32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4) that by itself is not sufficient to direct the dispensation of 5A inquiry. It requires an opinion to be formed by the concerned government that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with 5A inquiry which indicates that the Legislature intended that the appropriate government to apply its mind before dispensing with 5A inquiry. It also indicates the mere existence of an urgency u/s 17(1) or unforeseen emergency u/s 17(2) would not by themselves be sufficient for dispensing with 5A inquiry. 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 5A inquiry 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 5A inquiry 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 5A inquiry does not mean that in

and every case when there is an urgency contemplated u/s 17(1) and unforeseen emergency contemplated u/s 17(2) exists that by itself would not contain the need for dispensing with 5A inquiry. It is possible in a given case the urgency noticed by the appropriate Government u/s 17(1) or the unforeseen emergency u/s 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry u/s 5A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the 5A inquiry is inherent in the two types of urgencies contemplated u/s 17(1) and (2) of the Act.

26. A perusal of the aforesaid para shows that an opinion is required to be formed by the State Government that along with the existence of urgency or unforeseen emergency contemplated by Section 17(1) and Section 17(2) respectively, there is also a need for dispensing with Section 5A inquiry. The aforesaid provision indicates that the Legislature intended the appropriate Government to apply its mind before dispensing with Section 5A inquiry. It has further been pointed out that mere existence or unforeseen emergency would not by itself be sufficient for dispensing with Section 5A inquiry. It means, even in cases of urgency or emergency right to file objections and grant of an opportunity to hearing u/s 5A of the Act may still be kept intact. There is no whisper voicing the decision of the State to dispense with the enquiry u/s 5A of the Act. Had it been permitted then may be in this case things might have been different. The decision of Mukesh Hans's case (supra) has been followed and applied in the case of Essco Fabs (supra). Furthermore, this Court while deciding the cases of Punita Chaudhary and others v. State of Haryana (CWP No. 3129 of 2008, decided on 8.12.2008); Bhopu and Ors. v. State of Haryana and Ors. (CWP No. 16832 of 2003, decided on 18.1.2010); Dharambir Singh through L.Rs. and others v. State of Haryana and Ors. (CWP No. 9214 of 2003, decided on 21.4.2010); Rajinder and Ors. v. State of Haryana (CWP No. 381 of 2010, decided on 6.5.2010); and Chaman Lal and Ors. v. State of Haryana and Ors. (CWP No. 3998 of 2009, decided on 24.05.2010), has also followed the aforesaid decisions.

27. When the aforesaid principles are applied to the facts of present case, it becomes evident that there is complete lack of application of mind in invoking the urgency provisions of Section 17 of the Act as required by the principle laid down in Mukesh Hans's case (supra). In the absence of any such decision dispensing with Section 5A enquiry, Section 17(4) of the Act could not alone be invoked to defeat the vital rights of hearing and filing objections by the land owners.

28. The fact with regard to possession also needs to be placed beyond any doubt. It has come on record that the award was announced on 25.6.2009 (P-18), which stated that the possession of the land belonging to the petitioners was to be delivered to the respondents after harvesting of crop of Khariff 2009. The aforesaid course has been adopted by the respondent State in order to avoid any

payment of compensation in respect of damage to crops which might have accrued on account of taking possession of the standing crops. It is pertinent to mention that u/s 23(1) of the Act numerous factors are required to be taken into consideration while determining the amount of compensation to be awarded for the acquired land. The second important factor listed in Section 23(1) is that the damage sustained by the person interested by reason of taking of any standing crop or trees, which may be on the land at the time of Collector's taking possession, would also be one of the factor. However, the respondent State has expressly shown in the award that possession was to be taken after harvesting of crop of Khariff 2009 and, therefore, extended time has to be given for harvesting of crops or vegetables, if no compensation is awarded for them u/s 23(1) of the Act.

29. The aforesaid fact is also supported by the report of the Tehsildar dated 24.7.2009 stating that there was standing crops on the field of the petitioners (P-14/1 & P-14). To top it all, the statements of the President and Vice-President of the Municipal Committee, Samalkha (P-15 & P-15/1), also support the aforesaid factual position. They have stated that after spot inspection on 22.7.2009, standing crops were found on the land belonging to both the petitioners. They have also given details of crops. Therefore, the order passed by Hon''ble the Supreme Court on 21.7.2009 directing the respondents that the petitioners were not to be dispossessed from the land in question have to read in the context of the aforesaid facts and, therefore, the petitioners are in possession of the land, which could have been divested only after harvesting the Khariff crop. There is no question of any symbolic or notional possession as sought to be argued by the learned State counsel. The reliance in that regard placed by the learned State counsel on the judgment of Hon''ble the Supreme Court rendered in the case of Sita Ram Bhandar Society, New Delhi (supra), is wholly misplaced. There Hon''ble the Supreme Court was dealing with entirely a different issue than the one in hand. There was no fact stated in the award that the possession of the land was to be taken after harvesting Khariff crop which was standing on 25.6.2009 and thereafter report was submitted by the Revenue Officer with regard to standing crops on 21.7.2009. Hon''ble the Supreme Court has already granted interim order of staying dispossession of the petitioners from the land in question in the presence of the respondents. Therefore, there is no substance in the argument of Mr. Sehgal that symbolic possession in this case is deemed to have been taken on 17.7.2009. The overwhelming evidence to the contrary cannot be ignored.

30. The argument of Mr. Kamal Sehgal, learned State counsel that setting up of a Sewerage Treatment Plant itself is a public purpose showing urgency is no doubt correct. However, it must be borne in mind that every urgency does not lead to dispensing with inquiry u/s 5A of the Act. It is not an automatic effect of invoking Section 17(2)(c) that Section 5A stands dispensed with. An independent application of mind has been emphasised to respect the right of the land owners to apprise the authorities about the efficaciousness of their proposal and its

impact on their vocation. If the concerned authorities have applied their mind and had reached the conclusion that the establishment of a Sewerage Treatment Plant cannot even brook a delay of 30 days then Section 17(2)(c) of the Act could have been invoked. In the present case had the competent authorities applied their mind, there was no possibility of dispensing with Section 5A of the Act because the acquisition was made earlier on 16.11.2006 and 28.12.2006 (P-1 and P-2), which was dropped by de-notification u/s 48 of the Act, dated 8.4.2008 (P-5). There is no explanation tendered either on the record or by Mr. Kamal Sehgal, learned State counsel.

31. The argument based on the judgment of Hon''ble the Supreme Court in Sheikhar Hotels Gulmohar Enclave's case (supra) has not impressed us because in that case notification was issued dispensing with the requirement of Section 5A of the Act for filing of objections and Hon''ble the Supreme Court in para 8 while reiterating the right of the land owners for grant of hearing has observed that it would depend upon case to case whether dispensing with Section 5A has been done bona fide or the State functionary had invoked the power out of over-jealousness. The aforesaid position is evident from reading of para 8, which is a under:

8. There is no gainsaying in the fact that this right to file objection u/s 5A is a valuable right and the Governments are not given a free hand to dispense with Section 5A. Section 5A is only a safeguard against the arbitrary exercise of the power by the State. But one should also not loose sight of the fact that invocation of such a provision is also sometimes imperative as in order to meet the urgency of the situation it needs to be invoked in public interest. It depends upon cases to case. Sometimes it may not be necessary at all and the State functionaries may sometime out of over jealousy may invoke this provision which would seriously jeopardize the interest of the people. Therefore, it depends upon case to case where in a given situation Section 5A has been correctly invoked and the authorities were satisfied in an objective manner. In the present case, there is no two opinion that because of the globalization of economy Indian economy is progressing with fast speed, therefore in order to keep pace with the speed, invocation of Section 5A has become imperative.

32. Applying the aforesaid dicta, we are of the view that the facts of the present case would not justify invocation of urgency provision contemplated by Section 17(2)(c) of the Act because the land had already been notified earlier which resulted in de-notification dated 8.4.2008 u/s 48 of the Act (P-5). The process of acquisition was then restarted and it could not have been said that it cannot brook delay of 30 days, which is fixed by Section 5A for inviting objections. Moreover, there is no application of mind as required by the judgment of Hon''ble the Supreme Court in the cases of Mukesh Hans and Essco Fabs (supra) for dispensing with inquiry u/s 5A of the Act.

33. The argument of Mr. Kamal Sehgal based on the judgment of Hon''ble the Supreme Court in the case of Girias Investment Private Limited (supra) is wholly

irrelevant. Their Lordships" of the Supreme Court has laid down two ways of making out a case for mala fide. Firstly, it is required to be shown that the impugned acquisition has been made to damage the interest of a particular party and secondly such action is aimed at helping such another party which results in damage to the party alleging mala fide. Their Lordships" of the Supreme Court found in that case that there was no pleadings to that effect. However, it is not true with regard to the present case. Here there are documents dated 4.1.2008 (P-4) showing that the land belonging to Shri Dayanand was released on the ground that the Sewerage Treatment Plant was inside the abadi area and there is a noting dated 28.3.2007 (P-10) on the application filed by the aforesaid Shri Dayanand that once the Panchayat land is available then no land belonging to the agriculturist need be acquired. Both the documents along with the averments made in the writ petition as well as in the replication would show sufficient foundation having been laid down in the pleadings. Therefore, there is no escape for the conclusion that neither the land belonging to the petitioners is outside the abadi area nor the land belonging to village Panchayat has been acquired, coupled with the fact that the adjacent land owned by Shri Dayanand has been excluded by de-notification. Therefore, the aforesaid judgment has no application to the facts and circumstances of the present case.

34. As a sequel to the above discussion, the instant petition succeed and the impugned notification u/s 4 read with Section 17(2)(c) of the Act, dated 9.5.2008 (P-6), declaration u/s 6 read with Section 17 of the Act, dated 12.9.2008 (P-7) and all the subsequent proceedings pursuance to such declaration are hereby quashed qua the petitioners.