
(2015) 07 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 8055, 8227, 9265 of 2008(O&M) and 3355 of 2015(O&M)

Jhanda Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 4, 48
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 4, 4(1), 5, 5(4), 6

Citation : (2015) 07 P&H CK 0039

Hon'ble Judges : Satish Kumar Mittal, J; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : Shailendra Jain, Sr. Advocate assisted by Mannu Chaudhary and Kulbhushan Sharma, for the Appellant

Final Decision : Dismissed

Judgement

Harinder Singh Sidhu, J.—This judgment shall dispose of four writ petitions bearing Nos. CWP No. 8055, 8227, 9265 of 2008 and 3355 of 2015, in which similar issues have been raised. Challenge in these petitions is to the notifications dated 25.1.2008 and 18.3.2008 issued under Section 4 read with Section 17(1) and (4) and under Section 6 of the Land Acquisition Act, 1894, respectively, and all subsequent proceedings in furtherance thereof.

2. For disposal of all these petitions, the facts are being taken from CWP No. 8055 of 2008.

3. The petitioners are residents of Village Kherki Daula, Tehsil Sohna, District Gurgaon. They are aggrieved of the notifications, vide which their land is being acquired. It is their case that over the land which is being acquired, they have raised residential houses where they and their families are living. Some constructions raised over the said land are also being utilized for commercial purposes like small karyana shops, barber shops, tea stalls etc. It is stated that

80% of the petitioners are original inhabitants of village Kherki Daula, whereas, the remaining 20% are the non-proprietors of village Kherki Daula, who have settled there in due course of time due to increased urbanization and industrialization.

4. Going into the background of the acquisition, it has been stated that in 1963 the State of Punjab enacted the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (hereinafter referred to as the "1963 Act"). As per this Act which is applicable to Haryana as well, restrictions were provided to prevent haphazard and substandard development along side the Scheduled Roads and in the controlled areas in the States of Punjab and Haryana. As per section 4 of the said Act, the State Governments may by notification declare the whole or any part of any area adjacent to and within a distance of eight kilometres on either side of the boundary of any town to be a controlled area. Thereafter, as per Section 5 of the Act, a development plan is required to be framed for the controlled areas of the town as per detailed procedure laid down in the Act. Once the development plan has been finalized, then Sections 6, 7 and 8 follow, which deal with change of land use and permission to build etc.

5. Vide notification dated 10th July, 1964 issued under Section 4(1) of the 1963 Act, the State of Haryana declared the controlled area for the town of Gurgaon. The said controlled area was extended from time to time by subsequent notifications. Village Kherki Daula falls within the controlled area of the Gurgaon town.

6. Vide notification dated 11.7.2006 issued under Section 5(4) of the 1963 Act, the Draft Development Plan 2021-AD for Gurgaon- Manesar Urban Complex (hereinafter referred to as the "DDP-2021") was issued by respondent No. 1. In the Draft Drawing dated 22.6.2006, the proposed road link between Dwarka Residential Complex of Delhi to National Highway No. 8 at Gurgaon had been marked as V2(a) road. In clause VIII of the Draft Development Plan, the land reservation for the said V2 (a) road had been earmarked as 150 metres wide road with 30 metres wide green belt on both sides, making a total of 210 metres reservation for V2(a) road. A period of 30 days was specified for submitting objections to the Draft Development Plan. It is averred that as khasra numbers had not been mentioned in the notification for the lands falling in the alignment of the proposed road and on an examination of the Drawings attached to the DDP-2021 the petitioners found that their properties were not falling within the proposed reservation of 210 metres wide strip reserved for the road, hence they did not submit any objections in respect of the DDP-2021 as they were not affected by the proposed road as the road alignment did not fall over their lands over which their residential houses stand erected.

7. On 5.2.2007, the Final Development Plan 2012-AD Gurgaon Manesar Urban Complex, (hereinafter referred to as the "FDP-2021") was notified along with Final Drawing dated 14.11.2006. With the said notification, several restrictions

and conditions on use of land were also notified. It has been averred that in the final drawing dated 14.11.2006 the alignment of the V2(a) road has been drastically changed with the result that the properties of the petitioners also fall in the 210 metres wide strip reserved for the proposed road which was not so in the draft drawing dated 22.6.2006. It was alleged that the area over which the said V2(a) road was proposed to be laid as per the draft drawing dated 22.6.2006 belongs to either builders or their collaborators, but in the Final Drawings and the Final Development Plan the said area has been shown to be falling in the commercial belt and the lands of the petitioners over which there exists a complete basti having more than 100 residential houses has been included for laying the said V2(a) road.

8. The petitioners had filed CWP No. 4666 of 2008 challenging the alignment of the V2(a) road in the FDP dated 5.2.2007 on various grounds including that they did not get any opportunity to file objections after the change of the alignment from that in the draft drawing and draft development plan; that there was alternative vacant land available through which the said V2(a) road could be aligned and which would save the constructed houses of the petitioners; and that the alignment had been changed with a malafide intent to give benefit to builders and colonizers, whose land fell along the earlier alignment, etc. The said writ petition along with a bunch of other petitions was disposed of vide order dated 18.9.2008. The petitioners were given liberty to file their objections within 15 days which was required to be considered by authorities concerned after giving opportunity of hearing to the parties. The authorities were directed to pass orders on merits after taking into consideration National Capital Region Planning Act, 1985 and Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963. It was observed that in case the petitioners are able to convince the authorities with their objections and submissions, the authorities would be expected to act fairly and pass appropriate order by withdrawing the notifications. It was left open to the petitioners to re-agitate the impugned notifications before the Court in case their claims are not satisfactorily considered by the authorities.

9. Pursuant to the aforesaid directions, the petitioners submitted detailed objections. The petitioners and their Counsel were heard, and detailed order dated 8.7.2009 was passed rejecting their representation.

10. The petitioners filed CWP No. 12545 of 2009 challenging the aforesaid order of rejection and praying that the impugned alignment of the proposed road as given in the Final Drawing dated 14.11.2006 be quashed. The said writ petition has been dismissed by us today vide separate judgment.

11. After the publication of the FDP-2021, the State of Haryana issued notification u/s 4 of the Land Acquisition Act, 1894 dated 25.1.2008 seeking to acquire lands situated in the revenue estates of villages Kherki Daula, Pawala Khasrupur, Choma, Harsaru, Sihi, Hayatpur, Garauli Kala, Daulatabad, Tikampur, Dhanwalpur, Basai, Kherki Majra Dhankot and Dhankot, Tehsil and District

Gurgaon for a public purpose namely, for development and utilization of the land for 150 metres wide Periphery road linking Dwarka Township Delhi from Haryana boundary to National Highway No. 8 near village Kherki Daula at Gurgaon. This includes the land of the petitioners in village Kherki Daula. Vide the said notification the urgency provisions u/s 17(1) and 17(4) of the 1984 Act were also invoked. As the urgency provisions were invoked the petitioners were deprived of the opportunity to file objections u/s 5-A. Thereafter, notification u/s 6 was issued on 18.3.2008. It has been stressed that the Section 6 declaration was issued about two months after the Section 4 notification and the Section 4 notification was issued after about 11 months of the publication of the FDP-2021.

12. The aforesaid notifications have been challenged mainly on the following grounds:

(i) In the FDP-2021 the alignment of the road has been changed from the one proposed in the DDP-2021 at the instance of the builders and colonizers. While as per the DDP-2021 the land of the petitioners did not come in the alignment of the road but in the FDP-2021 their land falls in the alignment.

(ii) The urgency provisions have been wrongly invoked. There is no proper application of mind to the dire need to dispense with the objections u/s 5-A.

(iii) An alternative alignment of the road is possible which will pass through vacant land belonging to the petitioners thereby obviating the necessity to acquire the petitioners' land which is heavily constructed and populated.

13. We have heard Ld. Counsel for the parties and gone through the records. The arguments of Sh. Kulbhushan Sharma have been focussed mainly on the first and the third ground, while Sh. Shailendra Jain has mainly addressed on the second ground.

14. Sh. Amar Vivek on the other hand has defended the acquisition, stressing upon the extreme urgency for early completion of the road to ease the traffic congestion between Delhi and Gurgaon. He stated that 16.5 kilometers out of the 18 kilometers road length has already been completed by incurring considerable expenses. He stressed upon the need for early disposal of this case and in the alternative prayed that at any event the order for stay of dispossession earlier granted be vacated so that the remaining portion of the road be constructed and the flow of traffic between Gurgaon and Delhi be eased. He further stated that keeping in view the larger public interest and also the interest of the petitioners who had filed writ petitions challenging the acquisition, the State Government had worked out a very liberal settlement which had been accepted by a large number of petitioners and ten petitions out of a total of 16 petitions, wherein, the acquisition had been challenged had been disposed of in terms of the settlement. He pointed out that three of the ninety petitioners in CWP No. 8055 of 2008, i.e., petitioners No. 6, 48 and 59 have also accepted the settlement and hence their names may be deleted from the array of the petitioners. He further assured that even if these petitions are eventually dismissed, the State would

still be willing to offer the petitioners in these writ petitions a settlement on the same terms as entered into with the other petitioners whose writ petitions have been disposed of.

15. Having heard the Ld. Counsel, we are of the view that the petitions are without merit and deserve to be dismissed.

16. The first ground of challenge to the acquisition raised by the Ld. Counsel for the petitioners does not survive in view of our decision in CWP No. 12545 of 2009. In that case the alignment of the road in the FDP-2021 had been challenged on various grounds. We have found no infirmity in the said alignment and dismissed the petition.

17. Regarding the third ground for challenge to the acquisition, it needs to be noted that one of the grounds taken to challenge the alignment of the road in the FDP-2021 in CWP No. 12545 of 2009 was that alternative alignment of the road is possible which will pass through vacant land belonging to the petitioners thereby obviating the necessity to acquire the petitioners' land which is heavily constructed and populated. The Financial Commissioner and Principal Secretary to Government Haryana, Town and Country Planning Department, Haryana, Chandigarh after considering the representation/ objections of the petitioners in detail pursuant to the directions of this Court in CWP No. 4066 of 2008, has stated in the order dated 8.7.2009 that the petitioners had failed to provide any alternative route (alignment) which would pass through lesser constructed area, whereas on the other hand the Department was able to specifically point out that keeping in view the constraints of onward linkages within Delhi, the objections of National Highway Authority of India pertaining to revenue linkages and limited maneuverability available in ensuring a smooth alignment and disturbing minimum construction on the way, an attempt has been made to align the said 150 metre Northern Periphery Road to cater to the exponential growth in future traffic between Gurgaon and Delhi before the emergence of any crisis situation. He has noted that it is practically impossible to get vacant land through which a road could be laid without having many turns and bends. It has been stressed that if such wide roads have many turns and bends they lose their significance as periphery roads because it results in disruption of free flow of traffic, loss of fuel efficiency besides being more prone to accidents.

18. As the aforesaid order has been upheld and no infirmity in the alignment in the FDP-2021 has been found and CWP No. 12545 of 2009 has been dismissed, the third ground also would not survive in view of the said decision. Moreover, as the implementation of the FDP-2021 has been underway since 2007 and the construction of the road except for a stretch of 1.5 kilometers is already complete, no alternative can be considered at such a late stage. However, on the insistence of Ld. Counsel for the petitioners we perused some satellite images of the existing alignment and alternative alignment suggested by them, which had been placed on record by filing Civil Misc. applications. The alternate alignment suggested by the petitioners also does not appear to be totally free from

construction. Besides, it would require giving a curve to the otherwise straight portion of the road. This would certainly not be in public interest.

19. Thus, there is no merit in the third ground as well.

20. Elaborating on the ground that the urgency provisions have been wrongly invoked, Sh. Jain pointed out that the FDP-2021 was published on 5.2.2007, whereas, the notification u/s 4 read with Section 17(1) and 17(4) was issued on 25.1.2008 i.e., after a gap of about 11 months. Further, the Section 6 declaration was issued on 18.3.2008 about three months after the issuance of Section 4 notification. He further states that there has been no application of mind to the need and the necessity to dispense with the enquiry under Section 5A, nor is there any material to indicate that the urgency in execution of the project was of such a nature that it could not brook delay of even a few months which would be taken to decide the Section 5A objections of the petitioners. In support of his contentions, he has referred to various decisions of the Hon''ble Supreme Court, namely; Ram Dhari Jindal Memorial Trust Vs. Union of India (UOI) and Others, AIR 2012 SC 1878 : (2012) 4 SCALE 101 : (2012) 11 SCC 370 : (2012) AIRSCW 2609 , Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, (2011) 4 JT 524 : (2011) 3 RCR(Civil) 96 : (2011) 4 SCALE 677 : (2011) 5 SCC 553 : (2011) 8 SCR 359 , and Bharat Sewak Samaj Vs. LT. Governor and Others, (2012) 9 SCALE 3 : (2012) 12 SCC 675 where the circumstances under which the urgency provisions can be invoked have been explained. In all these cases, the Hon''ble Court held that the exercise of the urgency provisions was without merit and the same was quashed.

21. We have gone through the aforementioned decisions. What has been laid down therein is that the power of doing away with the enquiry under Section 5-A is an extraordinary power and is to be invoked only in circumstances warranting immediate possession. Before invoking this power to dispense with Section 5A enquiry, the Government is to apply its mind on the aspect whether the urgency is of such a nature that justifies elimination of even the summary enquiry under Section 5-A.

22. In Ram Dhari Jindal Memorial Trust's case (supra), the exercise of power by the Lt. Governor, Delhi under Sections 17(1) and (4) for the purpose of acquisition of land for "Rohini Residential Scheme" was held to be bad in law. It was held that except for a bald statement in the notification, there was no other material available on record which indicated that there has been application of mind by the Lt. Governor, Delhi on the aspect that urgency was of such nature that necessitated dispensation of enquiry under Section 5-A of the Act. The Hon''ble Court held that where the Government invokes urgency power under Sections 17(1) and (4) for the public purpose like "planned development of city" or "development of residential area" or "residential scheme", the initial presumption in favour of the Government does not arise and the burden lies on the Government to prove that the use of power was justified and dispensation of enquiry was necessary. As the respondents had failed to show to the satisfaction

of the Court that power of urgency and dispensation of enquiry under Section 5-A had been exercised with justification, the action of the Lt. Governor, Delhi was held to be illegal and was quashed.

23. In Radhy Shyam's case (supra), the Hon'ble Supreme Court after analysis of the case law on the subject culled out as many as nine principles. The principles relevant for the present discussion are:

"77.

(i)

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(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-bound to scrutinise the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, can the State invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any

person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4). The court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of *audi alteram partem* embodied in Sections 5-A(1) and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the court should view the invoking of Sections 17(1) and/or 17(4) with suspicion and carefully scrutinise the relevant record before adjudicating upon the legality of such acquisition."

24. In this case, the Hon''ble Court held that the State Government was not justified in invoking the urgency provisions for acquiring land for the planned industrial development of District Gautam Budh Singh Nagar through Greater Noida Industrial Development Authority. The Hon''ble Court found that the acquisition was primarily meant to cater to private interest in the name of industrial development of the district. It was not pleaded nor had any evidence been produced to show that the State Government or its agencies or instrumentalities were intending to establish industrial units on the acquired land either by itself or through its agencies. Moreover, it was noted that the notification u/s 4 was issued one year and three months after the proposal was sent by the Development authority. In these circumstances, the Hon''ble Court concluded that there was no real and substantive urgency which would justify invoking the urgency provision and exclude the application of Section 5-A enquiry.

25. In *Bharat Sewak Samaj* case (supra), the Hon''ble Supreme Court held that the decision of the Lieutenant Governor, Delhi to invoke the urgency provisions for acquiring land for developing the Mehrauli Heritage Zone under planned development of Delhi was *ex facie* illegal apart from being wholly arbitrary and unjustified. It was neither pleaded before the High Court nor was any material produced to show that the development was being executed on an emergency basis. Further the Court held that the development of Mehrauli Heritage Zone under planned development of Delhi was not so urgent that it could not wait for the few months time likely to be consumed in deciding the Section 5-A objections.

26. In the light of the above and other decisions of the Hon^{ble} Supreme Court, the proposition that urgency provisions for dispensing with the enquiry under Section 5-A of the 1894 Act can be invoked only in extraordinary circumstances where the acquisition cannot brook any delay, cannot be disputed. Further, there has to be proper application of mind to the necessity to invoke these provisions.

27. It is our considered view, that in the facts of the present case, the invocation of the urgency provisions for dispensing with the Section 5-A enquiry cannot be faulted.

28. The present acquisition is for the purpose of construction of 150 metre wide Northern Periphery Road linking Dwarka Township of Delhi from Haryana boundary to National Highway No. 8 near village Kherki Daula at Gurgaon. The acquisition notification was issued after the publication of the FDP-2021 which contained a provision for the above Northern Periphery Road as a V2(a) Road.

29. Invocation of urgency clause in cases involving construction of roads and Expressways unlike in cases for "planned development of city" or "development of residential area" or "residential scheme or for commercial, industrial or institutional purposes", has generally been approved by the Hon^{ble} Supreme Court in various cases.

30. Approving the invocation of urgency provisions and dispensing with Section 5-A enquiry for development of Transport Nagar for decongestion of traffic as per approved Master Plan in Sheikhar Hotels Gulmohar Enclave and Another Vs. State of Uttar Pradesh and Others, AIR 2008 SC 2284 : (2008) 7 JT 120 : (2008) 8 SCALE 322 , a case which very nearly approximates the present case, the Hon^{ble} Supreme Court observed:-

"5. It was also pointed out that the U.P. Urban Planning and Development Act, 1973 (hereinafter to be referred to as "the Development Act") had come into force on 12-6- 1973 with the object of development of certain areas. A master plan was prepared under the Development Act and after the same was published objections and suggestions were invited. Thereafter, the master plan was finalised. In the said master plan this area was earmarked for Transport Nagar. At present, the State road transport bus terminal is situated in the thickly populated area and there really is traffic congestion. The master plan contemplated acquisition of a total area of 501.58 hectares of land for the integrated plan for the purpose of alleviation of all the traffic problems, inter alia, by constructing a new Transport Nagar Bus-Stand at Delhi-Khurja and Shikarpur Roads and widening of the roads.....

8. There is no gainsaying in the fact that this right to file objection under Section 5-A is a valuable right and the Governments are not given a free hand to dispense with Section 5-A. Section 5-A is only a safeguard against the arbitrary exercise of the power by the State. But one should also not lose 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 case to case. Sometimes it may not be necessary at all and the State functionaries may sometimes out of overzealousness invoke this provision which would seriously jeopardise the interest of the people. Therefore, it depends upon case to case where in a given situation Section 5-A has been correctly invoked and the authorities were satisfied in an objective manner. In the present case, there are no two opinions that because of globalisation of the economy, Indian economy is progressing with fast speed, therefore in order to keep pace with the speed, invocation of Section 5-A has become imperative.

9. Traffic congestion is a common experience of one and all and it is very difficult to negotiate the traffic congestion in Delhi and National Capital Region. Therefore, in the present situation, it cannot be said that the invocation of Section 5-A was for ulterior purpose or was arbitrary exercise of the power. Since the master plan has already been prepared and it has been approved by the Planning Board and they have sanctioned a sum of Rs 20.65 crores for the development of this Transport Nagar and widening of National Highway 91 into four lanes. Therefore, the proposal was approved by the Board and it got the sanction from the National Capital Regional Planning Board and ultimately the Government invoked the power under Section 17(4) read with Section 5-A of the Act dispensing with the objections. In the light of these facts it cannot be said that invoking of power was in any way an improper exercise. There is need for decongestion of traffic and it is really the dire need of the hour and earlier it is implemented, the better for the people at large. In this connection learned Senior Counsel for the appellants invited our attention to the decision of this Court in *Union of India* wherein it was held that Section 5-A is not an empty formality but it is a substantive right which can be taken away only for good and valid reason and within the limitations prescribed under Section 17(4) of the Act. But in the present case the notification was struck down on the facts that no material was placed on record and secondly, it was also held that discontinuance of festival for want of land and any hindrance in using the land was not there. It was also pointed out that earlier an attempt was made to acquire the land for the very same purpose for holding such festivals and it was allowed to lapse by efflux of time and consequently, the Court found that there was no reference in the file to the need of invoking Section 17(4) and therefore, in a given situation, Their Lordships held that invocation of Section 17(4) of the Act was vitiated by non-application of mind by the authorities. Therefore, this case was decided on the question of fact.

10. As against this, learned Senior Counsel for the respondents submitted that traffic congestion has been recognised by this Court in *Union of India v. Praveen Gupta* as urgent need. In this case, land was acquired in order to shift the timber business from the walled city of old Delhi as it had become the source of traffic congestion. Therefore, it was required to be urgently shifted from the existing place to relieve the congestion by acquiring the land concerned for a public purpose, namely, for establishment of timber depot. In that context, Their Lordships held as follows: (*Praveen Gupta* case, SCC p. 81, para 8)

"8. @ since the acquisition is for shifting of timber business from the walled city to the outskirts of the city, shifting itself is for urgent purpose viz. to relieve the traffic congestion in the walled city. Under those circumstances, the exercise of power under Section 17(4) cannot be said to be unwarranted in this case."

31. The invocation of urgency provision dispensing with the enquiry under Section 5-A was also held justified in the case of construction of an Expressway in Nand Kishore Gupta and Others Vs. State of U.P. and Others, AIR 2010 SC 3654 : (2010) 10 JT 521 : (2010) 10 SCC 282 : (2010) 8 UJ 4154 : (2010) AIRSCW 5660 : (2010) 7 Supreme 949 :

"57. The Expressway is a work of immense public importance. The State gains advantages from the construction of an expressway and so does the general public. Creation of a corridor for fast-moving traffic resulting into curtailing the travelling time, as also the transport of the goods, would be some factors which speak in favour of the Project being for the public purpose. Much was stated about the 25 million sq m of land being acquired for the five parcels of land. In fact, in our opinion, as has rightly been commented upon by the High Court, the creation of the five zones for industry, residence, amusement, etc. would be complementary to the creation of the Expressway.

58. It cannot be forgotten that the creation of land parcels would give impetus to the industrial development of the State creating more jobs and helping the economy and thereby helping the general public. There can be no doubt that the implementation of the Project would result in coming into existence of five developed parcels/centres in the State for the use of the citizens. There shall, thus, be the planned development of this otherwise industrially backward area. The creation of these five parcels will certainly help the maximum utilisation of the Expressway and the existence of an Expressway for the fast-moving traffic would help the industrial culture created in the five parcels. Thus, both will be complimentary to each other and can be viewed as parts of an integral scheme. Therefore, it cannot be said that it is not a public purpose.....

84. This takes us to the next point pertaining to the application of Sections 17(1) and 17(4) of the Act. The learned counsel for the appellants have vociferously urged that there was no necessity whatsoever to apply the urgency clause to these acquisitions and further to avoid the enquiry under Section 5-A of the Act. According to the learned counsel, this dispensation of Section 5-A enquiry was not only unjust, but added to the sufferings of the appellants who had lost their fertile land. It was pointed out that this Project was slumbering since 2001 and it was in order to infuse fictitious urgency that a reference to the Commonwealth Games was made. According to the appellants, the right to be heard was akin to the fundamental rights and its breach has rendered the whole acquisition exercise illegal. A number of authorities were relied upon by the appellants.

85. The respondents, on the other hand, argued that there was material available before the Government justifying the invocation of the urgency clause.

The respondents argued that, in fact, the High Court has returned the finding that there was material before the State Government for dispensing with the enquiry under Section 5-A of the Act and that finding was based on the examination by the High Court of the records of the State Government. It was pointed out that going through the ordinary procedure for acquisition of land would have taken years for disposal of the objections while the land was urgently required for public purpose, in this case, the construction of interchange under Yamuna Expressway Project, which was absolutely essential for the purposes of running the highway."

32. We have also gone through the photocopy of noting file of the Haryana Urban Development Authority. As per this, the proposal for acquisition of land for the construction of the NPR as per demarcation given by DTP Gurgaon by issuing notification under Sections 4 and 6 was initiated on 6.2.2007 i.e., the very next day after the publication of the FDP-2021. The noting prepared and put up to the Government for approval specifically proposed that in the light of the circumstances and urgency of requirement of land for construction of the 150 metre wide periphery road, the Government may direct and approve that the provisions of Section 5-A shall not apply as per Section 17(4) of the 1894 Act. The acquisition of land under urgency clause was accordingly approved.

33. Based on the above and considering the purpose of the acquisition, the argument of Mr. Jain that the invoking of urgency provisions dispensing with Section 5-A enquiry was not justified, cannot be accepted.

34. Moreover, it cannot be lost sight of that the acquisition of land for the road is in terms of the FDP-2021 dated 5.2.2007. Much water has flown since then and the situation has advanced to a point where putting the clock back would be detrimental to public interest. As has been noticed in CWP No. 12545 of 2009 out of the total compensation of Rs.2986200292/-, an amount of Rs.2365055964/- has already been distributed amongst the land owners. Only possession of land measuring 32.02 acres had been stayed by the High Court and thus could not be taken. Thereafter, the laying of the Northern Periphery Road had commenced and about Rs.300 crores (approx.) had been spent till the filing of the written statement i.e., 23.10.2009. It has been pointed out that as on date out of the total length of 18 kilometers, 16.5 km road has already been constructed. As per the written statement (dated 23.10.2009) filed in that case 16 licences had been issued under the Haryana Development and Regulation of Urban Areas Act, 1975 for development of residential, commercial and IT parks, covering more than 250 acres area which have direct access from the service road of the NPR. It is stated that any change in the alignment of the Northern Periphery Road at this stage would disturb the approach for most of these projects and would put these projects in jeopardy. Several of these licencees have already started development works at site. Third party rights stand created in favour of thousands of persons by such developers and any change in the alignment of the 150 meter Northern Periphery Road is likely to result in a further flood of

litigation from the adversely affected parties who have made investments for undertaking development works in accordance with the provisions of the notified Development Plan, after obtaining necessary statutory approvals from the Government as well as from those who would have booked their space in accordance with the projects floated by the developers in accordance with the licences granted to them. It has been further stated that an ISBT-cum-Metro Depot is proposed towards the north of the said road, whereas, commercial-cum-residential Sector-83 is located towards south of the said NPR.

35. We may also add that sixteen writ petitions had been filed challenging the acquisition which were listed together. Out of these, 10 writ petitions (CWP No. 8060 of 2008, etc.) have been disposed of vide order dated 20.05.2015 in terms of a settlement entered into between the State Government and the petitioners therein. Sh. Amar Vivek, Ld. Additional Advocate General, has pointed out that three petitioners namely petitioner Nos. 6, 48 and 59 (in the present petition) have also accepted the terms of the settlement and accordingly they are no longer interested in pursuing the petition.

36. The Hon"ble Supreme Court in various cases has held that where the acquisition has been completed, a large number of landowners have accepted compensation and development works are also almost complete, the Courts would be justified in not interfering with the acquisition in such cases. In Tika Ram and Others Vs. State of U.P. and Others etc. etc., (2009) 12 JT 1 : (2009) 12 SCALE 349 : (2009) 10 SCC 689 : (2009) 15 SCR 905 :

"116. In a reported decision in Kishan Das v. State of U.P. this Court has taken a view that where the acquisition has been completed by taking the possession of the land under acquisition and the constructions have been made and completed, the question of urgency and the exercise of power under Section 17(4) would not arise. We must notice that acquisitions in this case are of 1984-1985 and two decades have passed thereafter. The whole township has come up, the houses and the lands have been allotted, sold and resold, awards have been passed and overwhelming majority of landowners have also accepted the compensation, this includes even some of the appellants. In such circumstances we do not think that the High Court was in any way wrong in not interfering with the exercise of power under Section 17(4) of the Act. At any rate, after the considered findings on the factual questions recorded by the High Court, we would not go into that question."

37. In Delhi Airtech Services Pvt. Ltd. and Another Vs. State of U.P. and Another, (2011) 9 JT 440 : (2011) 9 SCALE 201 :

"205. It is not in dispute and, in fact, can hardly be disputed that in the intervening period of nearly ten years, the acquired areas have fully developed. Not only this, it is informed during the course of hearing that the award was finally made by the authorities on 9-6-2008 and has been accepted by nearly 97.6% of the owners whose lands were acquired vide the said notification. In

other words, nearly all landowners have accepted the award and permitted the development activity to be carried out. This conduct of the owners as a whole would again be a factor which will weigh against the grant of any relief to the appellants. Huge amounts of money and resources of the State, as well as other bodies or persons have been invested on the development of this sector which is stated to be an industrial sector. It will be unjust and unfair to uproot such a developed sector on the plea raised by the present appellants.

206. In this view, I am fully supported by the judgment of a Division Bench of this Court, to which my learned Brother (Ganguly, J.) was a member, in *T.N. Housing Board v. L. Chandrasekaran*. The Bench was primarily dealing with the question of reconveyance of the acquired lands on the grounds of discrimination and arbitrariness. The High Court had passed a direction against the Board to reconvey the acquired land, which was held by this Court, on appeal, to be contrary to the provisions of Section 48 of the Act. This Court settled the point of law holding that it is not appropriate for the Court to quash the acquisition proceedings at the instance of one or two landowners, where the development had taken place and majority of the landowners had not challenged the acquisition."

38. In *Nand Kishore Gupta and Others Vs. State of U.P. and Others*, AIR 2010 SC 3654 : (2010) 10 JT 521 : (2010) 10 SCC 282 : (2010) 8 UJ 4154 : (2010) AIRSCW 5660 : (2010) 7 Supreme 949 , at page 298 :

"44. The first and foremost thing which we must keep in mind while deciding these matters is that at least in the present two matters (*Balbir Singh* case and *Nand Kishore* case, the subject related only to the acquisition of few hectares of land as compared to the acquisition of a large chunk which has not been challenged. Further, it is an admitted position that majority of the acquisition proceedings are over. In *Balbir Singh* case also, the persons who challenged the Project, were nine in number, owning about 7.09 ha of land i.e. about 0.42% of the total land.

45. It has been strongly argued on behalf of the State, the Company and YEIDA that the major activity of land acquisition process is over. It has been noted in *Balbir Singh* case that out of the 12,315 affected farmers in 133 villages over the total area of 1638 ha of the Expressway, 11,387 have already received compensation and only 142 farmers out of such a large number of villages have raised the issues, leaving 139 farmers who had not taken the compensation. This is apart from the fact that only 9 writ petitioners came in that writ petition. The story in *Nand Kishore* writ petition which was disposed of by the High Court along with other writ petitions is no different.

46. The learned counsel appearing on behalf of the appellants could not deny the fact that the total number of petitioners concerned in these acquisition proceedings, coming up before the High Court, was extremely insignificant as compared to those who had accepted the compensation. Of course, that by itself

may not be the only reason to hold against the appellants (the petitioners), however, that fact will have to be kept in mind while deciding the issues which cover the whole acquisition process, which acquisition is for the purpose of development of 25 million sq m of land. The High Court has also noticed this aspect. We have mentioned this aspect only with a limited objective of showing that the criticism against the whole scheme which would invalidate the acquisition would be difficult to be accepted, particularly in this case, in view of the fact that majority of the landowners have parted with possession, taken the compensation and thus, the whole scheme has progressed to a substantial level, wherefrom it will be extremely difficult now to turn back to square one."

39. The aforementioned observations are attracted in the facts of this case.

40. No other point was raised.

41. Accordingly the writ petitions are dismissed. However, the dismissal will not preclude the petitioners from approaching the State for a settlement on similar terms as in the case of other petitioners.