
(2017) 01 AHC CK 0048
In the Allahabad High Court
Case No : Writ C. Nos. 60110, 50417 of 2013

Kashi Jeevdaya Vistarini Goshala Evam Pashushala APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Land Acquisition Act, 1894 — Section 17, Section 4, Section 5A

Citation : (2017) 1 ADJ 832 : (2017) 2 ALLJ 194 : (2017) 121 ALR 306 : (2017) 135 RD 365

Hon'ble Judges : Dilip Gupta and Abhai Kumar, JJ.

Bench : Division Bench

Advocate : Daya Shanker Mishra and Chandrakesh Mishra, Advocates, for the Petitioner; C.S.C., Meenakshi Singh, A.K. Saxena, Kunal Ravi Singh, Q.H. Siddiqui and Vivek Varma, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. Writ Petition No. 50417 of 2013 has been filed by Kashi Jeevdaya Vistarini Goshala Evam Pashushala, Varanasi for quashing the notification dated 12 August 2013 issued under Section 4 (1) of the Land Acquisition Act 1894 (the Act) while Writ Petition No. 60110 of 2013 has been filed for quashing the declaration dated 3 October 2013 made under Section 6 of the Act.

The notification under Section 4 (1) of the Act was issued for acquisition of land measuring 6.6666 hectares in village Goithaha in district Varanasi for a public purpose, namely for construction of a Sewage Treatment Plant (STP) under the Trans Varuna Sewerage Plan of Jawaharlal Nehru National Urban Renewal Mission (JNNURM). The Governor was further pleased to direct under subsection (4) of Section 17 that the provisions of Section (5-A) of the Act shall not apply, since the Governor was of the opinion that the provisions of sub-section (1) of Section 17 of the Act were applicable to the said land inasmuch as the said land was urgently required for STP and that in view of the pressing urgency it was necessary to eliminate the delay likely to be caused by an enquiry under Section

(5-A) of the Act.

2. This notification dated 12 August 2013 issued under Section 4 (1) of the Act was published in the gazette on 12 August 2013 and in the two newspapers on 14 August 2013 and 15 August 2013. Public notice of the substance of the notification was given at convenient places on 17 August 2013. The date of the publication of the notification is, therefore, 17 August 2013.

The declaration dated 3 October 2013 made under Section 6 (1) of the Act was published in the gazette on 3 October 2013 and in the two newspapers on 9 October 2013. Public notice of the substance of the declaration was caused at convenient places on 17 October 2013. The date of the publication of the declaration is, therefore, 17 October 2013.

3. The notice under Section 9 (3) of the Act was served on 29 October 2013 and possession of the land is said to have been taken on 7 February 2015. The award was made under Section 11 of the Act on 25 July 2015.

4. Land was sought to be acquired for setting up a STP under the Trans Varuna Sewerage Plan of JNNURM. The Government of India had earlier launched the JNNURM on 13 December 2005. Varanasi was included under this programme to develop urban infrastructures and out of the various urban infrastructures, the responsibility of planning and resources of water supply and sewerage was placed on the U.P. Jal Nigam. Accordingly, a detailed project report dated 2 December 2008 for sewerage system for Trans Varuna area of Varanasi was prepared by the General Manager of the Jal Nigam. The report mentions that 35 per cent of the 15 lacs population of Varanasi was covered under the sewerage system in the Cis-Varuna area but there was no sewerage system in the Trans Varuna area, which had about 40 per cent of the population of the city and was growing fast and would have a population of about 5.27 lacs by 2010 and generate 63.264 Million Litres Daily (MLD) sewage. The project envisaged construction of a sewerage network of 142.58 Km and construction of a 120 MLD STP. It was felt that this project and the ongoing JBIC project would ensure that the Trans Varuna area was fully covered by a sewerage system and each household including the slum area will be connected with this system. The total cost of the proposed work was initially estimated to be Rs. 309.12 crores.

Varanasi city which is the most ancient city in the world is located along the western bank of the river Ganga. Its name has been derived from the two existing streams flowing in the north and south of the old City namely Varuna and Assi rivers. The sewerage system is said to have been first introduced during 1891-1917. Under the project three sewers were proposed. The main sewer starts at Assi and passes through two thickly populated areas of the town and discharges into the river Ganga. With the course of time and because of the development and expansion of the city, the waste water of the city discharged into the river started polluting the river Ganga. Two other sewers were also commenced in 1917 and 1971. Subsequently, in pursuance of a bi-lateral

agreement between Government of India and Government of Japan, Japan International Cooperation Agency (JICA) conducted a study on Water Quality Management Plan for river Ganga during April 2003 to March 2005 and formulated a master plan for quality management of river Ganga setting 2030 as the target year. Varanasi was selected as a "Priority City". The master plan prepared by JICA included sewerage and non-sewerage projects. The report mentions that since the Trans Varuna area of the city which was developing rapidly had no sewerage system, it was necessary to provide a comprehensive sewerage system in Trans Varuna area which would include treatment facilities also so as to check the pollution of the river Varuna which ultimately connects to river Ganga. Construction of a 140 MLD STP was also proposed.

5. It has been pointed out that at present the total sewerage discharged in the river Ganga in Varanasi is 285 MLD and the three existing STP plants are capable of treating only 1.08 MLD. The setting up of 120 MLD and 140 MLD STP plants was, therefore, considered necessary so that the entire sewerage could be treated.

6. It is for this purpose that earlier a notification dated 17 August 2010 was issued under Section 4 (1) of the Act for acquisition of 43.537 hectares of land for construction of two STP's having capacity of 140 MLD and 120 MLD in village Sathawa in district Varanasi. It needs to be noted that 120 MLD STP was to be constructed under the JNNURM while the 140 MLD STP was to be constructed under the JICA. 408 tenure holders were likely to be affected by acquisition of 43.5370 hectares of land as it was situated in four villages namely Sathwa, Hirdaypur, Rajnahian and Sai. This acquisition did not materialize as the declaration under Section 6 of the Act was not issued on account of various reasons including agitation by the villagers whose land was sought to be acquired. The acquisition proceedings, therefore, lapsed.

7. At Deenapur a 80 MLD STP had earlier been constructed in a campus of 49.64 acres. It was, therefore, subsequently proposed that the construction of the 140 MLD STP could be shifted to the vacant land at the Deenapur STP. The work of construction of this 140 MLD at Deenapur started in November 2015 and it is stated that 27 per cent of the construction work has already been completed.

8. Construction of the 120 MLD STP was, however, shifted to village Goithaha where land has been acquired pursuant to the issuance of the notification under Section 4 (1) of the Act as also the declaration made under Section 6 of the Act that have been impugned in the present petitions. It has been stated that under the latest technology only 6.6666 hectares of land situated in village Goithaha has been acquired as against the requirement of 23 hectares of land which was earlier considered necessary under the old technology for construction of the 120 MLD STP. What has also been stated is that the work of laying sewerage line of 148.58 Kms started on 16 November 2009 and about 142 Kms have already been laid and out of the sanctioned cost of Rs. 271.14 crores for the laying of the sewer line, about 223.87 crores have been spent. It has also been stated that

about 39 per cent of the main construction work of the 120 MLD STP has been completed and the remaining portion, it is stated would be completed by March 2017. However, as a result of change of the 120 MLD STP site from village Sathwa to village Goithaha, which is about one Km earlier than Sathwa, about 865 mts extra sewer line has been laid and the sewer line is now being connected to the STP plant in village Goithaha.

9. The total land of the petitioner at Goithaha is about 27 hectares out of which only 6.6666 hectares has been acquired. The petitioner would, therefore, still be left with about more than 20 hectares of land. It has also been stated that out of the aforesaid area of land measuring 27 hectares belonging to the petitioner, only 0.364 hectares is being used for the Goshala and the Administrative building and the rest of the vacant land is being used for the agricultural purpose.

10. The main purpose of setting up STP is to control pollution in the river Ganga in Varanasi since it treats the sewage. Treated water can be used for irrigation purposes and sludge can be used as manure. The Supreme Court in *M.C. Mehta v. Union of India*, (1987) 4 SCC 463 emphasized, in a public interest litigation pertaining to pollution in the river Ganga, that uncontrolled pollution of river water by effluents should be stopped. Paragraph 2 dealing with this issue is reproduced: -

"Water is the most important of the elements of nature. River valleys have been the cradles of civilization from the beginning of the world. Aryan civilization grew around the town and villages on the banks of the river Ganga. Varanasi which is one of the cities on the banks of the river Ganga is considered to be one of the oldest human settlements in the world. It is the popular belief that the river Ganga is the purifier of all but we are now led to the situation that action has to be taken to prevent the pollution of the water of the river Ganga since we have reached a stage that any further pollution of the river water is likely to lead to a catastrophe. There are today large towns inhabited by millions of people on the banks of the river Ganga. There are also large industries on its banks. Sewage of the towns and cities on the banks of the river and the trade effluents of the factories and other industries are continuously being discharged into the river. It is the complaint of the petitioner that neither the government nor the people are giving adequate attention to stop the pollution of the river Ganga. Steps have, therefore, to be taken for the purpose of protecting the cleanliness of the stream in the river Ganga, which is in fact the life sustainer of a large part of the northern India."

(emphasis supplied)

11. In *Ganga Mahasabha and Another v. Union of India and Others*, (2009) 5 ADJ 337, a Division Bench of this Court also noted with concern the pollution that was being caused by sewage discharge in the river Ganga at Varanasi :-

"There is no river in the world which has influenced humanity or contributed to the growth of material civilization, or of special ethics to such an extent as the

holy river Ganga. The mighty river which has silently worked through ages in an unceasing process of regeneration of soil, spreading life and sustenance to vast humanity, is today, struggling to survive from uncontrolled and unabated pollution of its water caused by sewage discharge from towns, cities including discharge of effluents from industries, tanneries and mills situate on its banks.

(emphasis supplied)

12. Realising the importance, the Central Government by a notification issued under sub-sections (1) and (3) of Section 3 of the Environment (Protection) Act, 1986 has constituted an Authority called "National Ganga Basin River Authority" for taking measures for effective abatement of pollution and conservation of the river Ganga. It noticed that the river Ganga has been facing serious threats due to the discharge of increasing quantities of sewage effluents and trade effluents on account of rapid urbanization and industrialization and therefore, there was an urgent need to provide a comprehensive planning and management.

13. It is also pertinent to notice that the urgent requirement of setting up the STP plant at Varanasi was highlighted in a Public Interest Litigation. This Public Interest Litigation No. 38734 of 2013, Ravinder Jaiswal, Member of Legislative Assembly, Varanasi v. Union of India and Others was filed by Ravinder Jaiswal, a member of the Legislative Assembly for completion of the installation of the STP in Trans Varuna area. It was stated that though substantial amount of money had been spent for laying the sewer lines but land had not been acquired for the construction of the STP. Reference was also made to a communication dated 17 July 2013 sent by the District Magistrate, Varanasi for acquisition of 6.6666 hectares of land in village Goithaha. The Court noticed that the filing of the Writ Petition had the desired effect as the District Magistrate by the aforesaid letter had initiated the process of acquisition of land for construction of STP. At this stage, it also needs to be noted that the earlier notification issued in 2010 under Section 4 of the Act for acquisition of land for construction of the STP stood lapsed. This Public Interest Litigation petition was disposed of on 5 August 2013 by a Division Bench of this Court with a direction to all the State Authorities to ensure that land was made available for the construction of the STP at an early date and preferably within four months. The observations are as follows :-

"Heard learned counsel for the petitioner and Sri Vivek Varma, learned counsel for the Nagar Ayukt, Nagar Nigam Varanasi - respondent no.4 as well as learned counsel for the State.

The prayer made in this writ petition preferred by way of public interest litigation is to direct the respondents to complete the project for installation of Sewerage Scheme of Trans Varuna in Varanasi in the interest of public at large within a reasonable time period.

Learned counsel for the petitioner had shown from the materials on record that although more than 144 crores had been spent in the project, the State Government had failed to acquire the land required for construction of Sewage

Treatment Plant, which finds reference in the letter of Minister of Urban Development, U.P. Lucknow dated 11th February, 2013 which is part of Annexure No.9 to this writ petition.

Learned counsel for the Nagar Ayukt has produced before us a copy of the letter dated 17th July, 2013 sent by the District Magistrate, Varanasi to Commissioner-cum-Director, Land Acquisition Directorate, Board of Revenue, Lucknow, requesting for issuance of a notification under Section 4(1)/17 of the Land Acquisition Act, for acquisition of 6.6666 hectares of land in Village Goithaha, Pargana Shivpur, Tehsil and District Varanasi for the Sewage Treatment Plant under consideration. It appears that filing of this writ petition on 11th July, 2013 had desired effect and the District Magistrate has already initiated proposal for acquisition of land required for the Sewage Treatment Plant. It appears that the funds in whole or in part have been made available from the Central Government for the project in larger public interest.

In such circumstances, we dispose of this writ petition with direction to all the concerned Authorities of the State of U.P. to ensure that the proposal for acquisition of suitable land for the Sewage Treatment Plant is brought to logical conclusion and land is acquired and made available for the construction of Sewage Treatment Plant at a suitable place, at an early date, preferably within four months. Petitioner as well as counsel for the State should intimate all the concerned Authorities about direction passed in this public interest litigation."

(emphasis supplied)

14. However, Public Interest Litigation (PIL) No. 49590 of 2013, Manav Jan Kalyan Sewa Samiti v. State of U.P. through Chief Secretary and 5 Others. was subsequently filed by Manav Jan Kalyan Sewa Samiti for shifting the STP plant from village Goithaha to any other place. According to the petitioner, the environment and health of the villagers would be adversely affected if the plant was set up. This petition was dismissed by the Division Bench by a judgment dated 13 September 2013 after noticing the earlier judgment rendered on 5 August 2013 in Public Interest Litigation (PIL) No. 38734 of 2013 filed by Ravinder Jaiswal and the observations are as follows :-

"This writ petition has been preferred as a PIL by a Samiti situated in village Goithaha, Post Sarnath, Tehsil Sadar, District Varanasi. The prayer made in the petition is to direct the respondents and all concerned persons to shift the establishment of Sewerage Treatment Plant (STP) from village Goithaha to any other place away from abadi of public and further direct them not to proceed to take any step for establishing STP in village Goithaha.

According to learned counsel for the petitioner, establishment of STP in the village in question will adversely affect the environment and health of the villagers and, therefore, the STP should be located in some other village where there is no abadi and the pollution caused by STP will not have any adverse effect.

Learned counsel for the State has submitted that the matter relating to installation of Sewerage Scheme of Trans Varuna in Varanasi fell for consideration before this Court in another writ petition bearing Public Interest Litigation (PIL) No. 38734 of 2013 (Ravindra Jaiswal, Member of Legislative Assembly, Varanasi v. Union of India & Ors.) and that writ petition was finally disposed of on 05.08.2003 by the following order: -

According to learned counsel for the State, the basic presumption of the petitioner that STP causes pollution is incorrect and, as a matter of fact, STP is installed with a view to prevent pollution if the sewage is left untreated. He has further submitted that the purpose of the writ petition is to prevent the installation of STP, whereas this Court has already directed the concerned authorities to ensure that the proposal for acquisition of suitable land for installation of STP is brought to a logical conclusion by selecting a suitable place for installation of STP at the earliest, preferably within four months.

The installation of STP is a necessity and has to be guided by policy decision under which the Central Government has already provided funds and State Government is under obligation to install such a plant for serving larger public interest. The issue as to where such plant should be located has to be left to the discretion of the concerned authorities and unless there be serious and substantial allegation of mala fide against the concerned authorities, this Court should not interfere with the discretion in such administrative matters where no Statute is involved.

In the facts of the case, we are not persuaded to interfere with regard to selection of a site for installation of STP in Varanasi district. The writ petition is, therefore, dismissed."

(emphasis supplied)

15. Under the JNNURM, the entire work was to be finished by 2012 but except for laying of sewer line, the STP could not be built because of non-availability of land. Without the construction of the STP no purpose could have been achieved by the laying of the sewer line as the sewage had to be treated and, therefore, acquisition of land for establishing the STP was considered to be necessary and urgent.

16. The respondents have also highlighted the amount already spent in the construction of the STP at Goithaha, and the same as stated in the affidavit, is as follows:

Sl. No.

Description of work

Quantity

Sanctioned cost (Rs. in crores)

Work completed

Cost of works completed (Rs. in Crores)

Remarks

1.

Sewer Line, its appurtenant works and road restoration

142.58 km

271.14

142.00 km (99.59%)

223.87

Work in progress

2.

Main Pumping Station (MPS) at Goithaha

01 No. (120 MLD)

24.25

36%

7.86

Work in Progress

3.

Sewage Treatment Plant (STP) at Goithaha

01 No. (120 MLD) based on SBR Technology

119.34

36%

36.52

Work in progress

4.

Boundary Wall at Goithaha

1400 m

1.26

95%

1.01

Work in progress

5.

Intermediate Pumping Station (IPS) at Narokhar

01 No.

5.52

75%

4.45

Work in progress

6.

Treated Effluent Pumping Station

01 No. (120 MLD)

20.57

-

-

Tender is being finalised by the Tender Committee at Head Quarter Level

7.

Treated Effluent Pumping Main and Road Restoration

2.8 km

14.24

-

-

8.

Power Connection

02 Job

6.86

-

-

-

9.

Centage, Labour Cess & Contingencies

Job

64.57

-

40.00

-

10.

Electricity Charges and Fuel Charges for DLP (Defect Liability Period of 12 months)

-

8.18

-

-

Will be paid during DLP

Total =

535.93

313.71

17. It needs to be stated that earlier the cost of construction of STP and laying sewer pipe lines was estimated at Rs.309.12 crores but this has now been revised to Rs.407.31 crores. Out of this, an amount of Rs.136 crores has been earmarked for construction of the STP.

18. These important issues have to be kept in mind while examining the issues raised by the learned counsel for the petitioner to assail the notification issued under Section 4 (1) of the Act and the declaration made under Section 6 of the Act.

19. Sri Daya Shanker Mishra, learned counsel for the petitioner assisted by Sri Chandrakesh Mishra and Sri Vishnu Pandey, made the following submissions :

i) the State Government was not justified in invoking the provisions of Section 17(4) of the Act to direct that the provisions of Section (5-A) shall not apply since there was no urgency as a result of which the dispensation of the enquiry under Section (5-A) is bad in law;

ii) earlier, the notification under Section 4(1) of the Act was issued for acquisition of 43.537 hectares of land in village Sathwa for construction of the STP but

thereafter for arbitrary reasons a fresh notification under Section 4(1) of the Act has been issued again for construction of the STP in village Goithaha in which an area measuring 6.6666 hectares belonging to the petitioner has been included;

iii) neither possession of the land has been taken in accordance with law nor 80% of the compensation, as estimated by the Collector, has been paid;

iv) The construction of the STP at village Goithaha will cause serious environmental problems to the villagers, including the children studying in Schools situated close to the site of construction; and

v) environment clearance for the project was not taken from the concerned Authorities.

20. Sri Ramesh Upadhyay, learned Chief Standing Counsel appearing for the respondents assisted by Ms. Meenakshi Singh, learned Standing Counsel, however, submitted that :

i) the State Government was justified in invoking the provisions of Section 17(4) of the Act and exempting the enquiry under Section (5-A) of the Act as the land was urgently required for construction of the STP and that there was pressing urgency to eliminate the delay likely to be caused by an enquiry under Section (5-A) of the Act;

ii) the earlier notification dated 17 August 2010 issued under Section 4(1) of the Act for acquisition of 43.537 hectares of land was not pursued and it lapsed. The State Government was justified in issuing the subsequent notification for acquisition of 6.6666 hectares of land in village Goithaha for construction of the STP;

iii) possession of land was taken in accordance with law and 80 per cent of the estimated compensation was offered to the petitioner.

(iv) no environmental issues will arise in the village because of the construction of the STP; and

(v) there was no necessity of seeking any clearance from the Environmental Authorities for setting up the STP since only domestic sewage is to be treated.

21. We have considered the submissions advanced by the learned counsel for the parties.

22. The first issue that needs consideration is as to whether the State Government was justified in directing under Section 17(4) of the Act that the provisions of Section 17(1) of the Act were applicable to the land as the land was urgently required for construction of the STP and that in view of the pressing urgency it was necessary to eliminate the delay likely to be caused by an enquiry under Section (5-A) of the Act. In support of this contention, learned counsel for the petitioner has placed reliance upon certain decisions to which reference shall be made but before that it is necessary to examine the factual aspects.

23. As noted above, the land was sought to be acquired for setting up the STP in the Trans Varuna Sewage Plan of JNNURM. This scheme was launched on 13 December 2005 by the Government of India and the responsibility of planning and resources of water supply and sewerage was fastened on the U.P. Jal Nigam. The three existing STPs were capable of treating at best 1.08 MLD, while the total sewage discharged in the river Ganga in Varanasi is stated to be 285 MLD. It was, therefore, considered necessary that 120 MLD and 140 MLD STP should be constructed for treatment of sewage. The U.P. Jal Nigam had prepared a detailed project report for construction of sewerage network of 142.58 kms. as also the 120 MLD STP and 140 MLD STP. The 120 MLD STP was to be constructed under the JNNURM while the 140 MLD STP was to be constructed under JICA. Under the JNNURM, this was required to be done by 2012. Accordingly, the work of laying sewer lines started on 16 November 2009 and for construction of the STP, a notification under Section 4(1) of the Act was issued on 17 August 2010 for acquisition of 43.537 hectares of land. This included about 24 hectares of land in village Sathwa for the 120 MLD STP and the remaining land for the 140 MLD STP. It was, however, noticed that there was a strong agitation by the 408 tenure holders who were likely to be affected. It was, therefore, considered appropriate not to proceed with the aforesaid notification and it was allowed to lapse. This is clear from the communication dated 8 August 2011 sent by the General Manager of the Jal Nigam to the Nagar Ayukta. In the said communication, it was mentioned that as against the requirement of laying 142.58 kms. sewerage network, about 142 kms. of sewer lines had already been laid and 3 per cent of the intermediate pumping station work had also been completed. It was mentioned that though the work had to be completed in 2012, the construction of the STP could not commence because of non-availability of land and that the purpose of treating the sewage could be achieved only when the STP was constructed. A request was, therefore, made to make available suitable land at the earliest on priority basis. It was also stated that in case it was not possible to provide 24 hectares of land for setting up the 120 MLD STP, then 7-8 hectares of land should be made available as under the new SBR technology, lesser area was required.

24. A proposal was then forwarded by the Ganga Pollution Control Board to the District Magistrate for acquisition of 6.6666 hectares of land in village Goithaha. The said proposal was examined by the District Magistrate. The District Magistrate noticed that the proposed acquisition of land for setting up the STP was not only in public interest as it would solve the sewerage problem but was also urgent and so it was necessary to take immediate possession of the land. Recommendation was, therefore, made for invoking the provisions of Section 17(4) of the Act as Section 17(1) was found to be applicable.

25. It was also needs to be stated that a petition bearing PIL No.38734 of 2013 was filed by a Member of Legislative Assembly, Varanasi in regard to the construction of the STP. It was stated that though substantial amount of money had been spent on the laying of sewer pipelines, the STP could not be

constructed because land had not been acquired. It was during the pendency of the said petition that the aforesaid communication dated 17 July 2013 was sent by the District Magistrate, Varanasi to the Commissioner-cum-Director, Land Acquisition Directorate, Board of Revenue, Lucknow for issuance of the notification under Section 4(1) read with Section 17(4) of the Act for acquisition of 6.6666 hectares of land in Village Goithaha. This communication was placed before the Division Bench hearing the said Public Interest Litigation. The Court observed that the filing of the writ petition had the desired effect as the District Magistrate had initiated the acquisition proceedings. The Public Interest Litigation was, accordingly, disposed of with a direction to all the concerned Authorities of the State to ensure that the proposal for acquisition of suitable land for STP is brought to its logical conclusion and land is acquired and made available for the construction of STP at a suitable place at an early date and preferably within four months.

26. The contention of learned counsel for the petitioner, however, is that there was no real urgency inasmuch as even the earlier notification issued under Section 4(1) of the Act in 2010 for construction of the STP was not pursued. In this connection, learned counsel placed reliance upon the decisions of the Supreme Court in *Sri Radhy Shyam (Dead) through L.Rs. & Ors. v. State of U.P. & Ors.*, (2011) 5 SCC 553, *Kedar Nath Yadav v. State of West Bengal & Ors.*, AIR 2016 SC 4156, *Dev Sharan v. State of Uttar Pradesh*, (2011) 4 SCC 769, *Rajendra Estate Private Limited v. State of U.P. & Ors.*, Civil Appeal No.6353 of 2013, decided on 5 August 2013 and *Devendra Singh & Ors. v. State of Uttar Pradesh & Ors.*, (2011) 9 SCC 551.

27. It is true that a notification dated 17 August 2010 had earlier been issued for acquisition of 43.537 hectares of land situated in four villages for construction of two STP's of 120 MLD and 140 MLD but about 408 tenure holders were likely to be affected by this acquisition. The State Government, therefore, considered it appropriate not to pursue with the acquisition and the declaration under Section 6 of the Act was not made. It was then decided to shift the construction of the 140 MLD to the vacant area in the campus of the Deenapur STP which had earlier been constructed in a campus of 49.64 acres as that would not only utilize vacant area of the existing STP plant but would also save the cost of acquisition and also address the problems of the tenure holders whose land was sought to be acquired. However, suitable land for construction of the 120 MLD STP had to be found out. For this purpose, the authorities worked out that instead of acquiring 23 hectares of land earlier considered necessary for the 120 MLD, a new technology could be utilized which would require only about 7 to 8 hectares of land. The authorities then proceeded for acquisition of 6.6666 hectares of land situated in village Goithaha, from out of the 27 hectares of land belonging to the petitioner. As noticed above, only 0.364 hectares out of the 27 hectares of land was being used for the petitioner for the Goshala and for the Administrative Building and the remaining land was vacant. The petitioner is, therefore, not justified in asserting that for mala fide reasons, the land of 408 tenure holders

was not acquired and, on the other hand, 6.666 hectares of land belonging to the petitioner has been acquired.

28. The issue of urgency is required to be examined in the light of the facts stated above for the construction of the STP. Under the JNNURM, pollution in the river Ganges in Varanasi was required to be arrested by having a sewerage network of 142 kms. and construction of a 120 MLD STP. Another 140 MLD STP was required to be constructed under the JICA. The total sewerage discharged in the river Ganga in Varanasi is stated to be 285 MLD and the three existing STPs were capable of treating only 1.08 MLD. The setting up of 120 MLD and 140 MLD STPs was, therefore, not only necessary but was also urgent so that sewerage could be treated and the pollution stopped. By 2011, about 83 kms. of sewer pipelines had been laid but for treatment of sewerage, it was absolutely necessary that the STP should be constructed so that it could be treated. Substantial amount of money had already been spent on the laying of sewer pipelines.

29. It was for the authorities to decide as to what land was best suitable for acquisition. This issue was also examined in Public Interest Litigation No. 49590 of 2013. The Court repelled the argument that the STP sought to be established in village Goithaha should be shifted to some other village and the issue as to where such plant should be located had to be left to the discretion of the concerned authorities. The urgency for construction of the STP was taken note of by the Division Bench of this Court while hearing Public Interest Litigation No. 3873 of 2013 that had been filed at a stage when land had not been chosen for construction of the STP. The Court noticed that installation of STP was a necessity and realizing the urgent need directed that land should be made available for construction of the STP at an early date and preferably within a period of four months.

Learned counsel for the petitioner has relied upon certain decisions.

30. In *Radhey Shyam*, the Supreme Court observed that when acquisition was undertaken by invoking Section 4 read with Sections 17(1) and 17(4) of the Act, the High Court should insist upon filing of a counter affidavit by the respondents and production of the relevant records and should carefully scrutinise the same before pronouncing upon the legality of the impugned notifications to find out whether the competent authority had formed a bona fide opinion on the issue of invoking urgency provision and excluding the application of Section (5-A) of the Act. The Supreme Court further observed that 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 was sought to be acquired was not for a public purpose at all or that the exercise of power was vitiated due to mala fides or that the concerned authority did not apply its mind to the relevant factors and the records.

31. In Kedar Nath Yadav, the application of Section (5-A) had not been excluded. The Supreme Court in fact examined whether the enquiry as contemplated under Section 5-A the Act had been conducted by the Land Acquisition Officer.

32. In Dev Sharan, the Supreme Court relied upon its earlier decision in Essco Fabs Private Limited & Anr. v. State of Haryana & Anr., (2009) 2 SCC 377 wherein it was held that even if a case is covered by sub-section (1) of Section 17, it would not mean that there is no requirement of holding an enquiry or hearing objections under Section (5-A). The Supreme Court, however, found that there was a substantial time gap of 11 months and 23 days between the publication of the notification under Section 4(1) of the Act and the declaration under Section 6 and, therefore, the slow pace at which the Government machinery functioned in processing the acquisition clearly showed that there was no urgency for acquiring the land so as to warrant invoking Section 17(4) of the Act.

33. In Rajendra Estate Pvt. Ltd., the Supreme Court followed its earlier decision in Radhy Shyam. The exclusion of Section 5-A was not upheld for the reason that the notification dated 11 September 2008 issued under Section 4(1) of the Act was published on 16 July 2009 after a gap of ten months which indicated the lackadaisical approach of the officers of the State Government.

34. In Devendra Singh the Supreme Court, after referring to its earlier decision in Radhy Shyam, took judicial notice of the fact that certain public purposes such as development of residential, commercial, industrial or institutional areas by their intrinsic nature and character contemplate planning, execution and implementation of the scheme which generally take time and, therefore, acquisition of the land for the said public purpose may not justify the provisions excluding the enquiry under Section 5-A of the Act.

35. Learned counsel for the petitioner submitted that if there was any urgency, the respondents would have taken possession of the land immediately after the publication of the declaration under Section 6 of the Act on 17 August 2013 but possession of land, even according to the respondents, was taken only on 7 February 2015. Notice under Section 9(3) of the Act was served on 29 October 2013 and merely because possession was not taken between 29 October 2013 and 11 December 2013 would not mean that the exclusion of the provisions of Section (5-A) of the Act would be bad in law. It is also seen from the records that the Court had passed an interim order in the first Writ Petition No.60110 of 2013 on 11 December 2013 that till the next date of listing, the status quo in regard to the nature and possession of the property in question shall be maintained. The petition was dismissed on 3 February 2015 and the interim order was vacated. It was only thereafter that possession could be taken and it was taken on 7 February 2015.

36. The decisions relied upon by learned counsel, therefore, do not help the petitioner. On the other hand, as noticed above, there was enough material before the State Government to form an opinion that there was a need to

exclude the provisions of Section 5-A of the Act. It cannot, therefore, be said that the decision of the State Government to exclude the provisions of Section 5-A of the Act was either arbitrary or based on no material on the records. The construction of the STP was not only a necessity but an urgent necessity because of which there was a pressing need to exclude the enquiry under Section 5-A of the Act.

37. What needs to be remembered is that 142 kms. of sewer pipelines have been laid and out of the sanctioned cost of Rs.271.14 crores for the laying of sewer pipelines, about 223.87 crores have been spent. Rs.102.52 crores have also been spent in the installation of the 120 MLD STP and it is stated that more than 39 per cent work is over. A Division Bench of this Court in a petition filed in public interest had also directed the State Government to make available suitable land for construction of the STP at an early date and preferably within a period of four months. In the subsequent public interest litigation filed by Manav Jan Kalyan Sewa Samiti, the prayer for shifting the STP to another village was rejected.

38. Learned counsel for the petitioner also submitted that the sewer line had been laid on a portion of the land that had been proposed to be acquired under the notification dated 17 August 2010. This submission cannot be accepted. The acquisition of 43.537 hectares of land under the notification dated 17 August 2010 issued under Section 4 (1) of the Act was for construction of two STPs of 120 MLD and 140 MLD in village Sathwa. Neither was the aforesaid land proposed to be utilized for the sewer line nor any amount earmarked for acquisition of this land was utilized for laying the sewer lines. A separate fund had been created for laying of sewer lines and the sewer line has been laid from out of this fund. Learned counsel for the petitioner is, therefore, not correct in urging that since the acquisition notification dated 17 August 2010 was not pursued, the amount spent in laying the sewer lines has gone waste.

39. Learned counsel for the petitioner also submitted that the setting up of the STP in village Goithaha would result in environmental problems. In this connection, learned counsel placed reliance upon the report dated 23 September 2000 submitted by the District Magistrate, Varanasi in connection with the inspection that was carried out on a complaint having been made by the villagers that the water of the hand-pumps had become polluted on account of water that was being discharged from the Deenapur sewerage plant. The District Magistrate noted that the executing agency which had constructed the effluent channel had dug soil from the adjoining areas of the plant and left the pits unfilled. It was on this account that the drinking water had become polluted. The District Magistrate, therefore, had directed the Executive Engineer to solve the problem. In the counter affidavit, it has been stated that now there is no pollution since the entire system at Deenapur STP which was earlier managed through open channel has subsequently been converted into RCC pipes and the drainage system, at present, is according to the standards prescribed. It has also been stated that the water of hand-pumps at Deenapur was sent for chemical

examination. The report dated 1 February 2014 regarding the water of hand-pumps at Deenapur which has been enclosed with the counter affidavit mentions that the water is fit for human consumption. Thus, though there may have been some environmental problems in 2000 when the report of the District Magistrate was submitted but at present there appears to be no environmental problem and none has been pointed out since the petitioner has relied only on the report dated 23 September 2000. It has also been stated that at present under the new SBR technology, the effluents discharged in the river would flow under the guidelines framed by the National Ganga River Basin Authority.

40. Learned counsel for the petitioner also submitted that environment clearance has not been obtained from the relevant authorities. It needs to be stated that there is no averment in the writ petition regarding this issue. Learned Chief Standing Counsel has, however, submitted that environmental clearance is not required for construction of the STP since only domestic sewage is to be treated. We, however, do not propose to examine this issue in absence of any pleading in the writ petition.

41. Learned counsel for the petitioner also submitted that 80 per cent of the estimated compensation was not paid to the petitioner before taking possession and so the provisions of Section 17 (3-A) of the Act have not complied with.

42. Learned Chief Standing Counsel pointed out that on 16 November 2013, a notice was sent in writing to the petitioner association to receive 80 per cent of the estimated compensation. This notice was not accepted. Subsequently, on 22 November 2013, notice was also sent through speed post for accepting the amount but this notice was returned back with the endorsement of the postal acknowledgment that the addressee has refused to accept the notice. Subsequently, a notice was also published in the two newspapers namely, "Hindustan" and "Amar Ujala" on 7 December 2013 informing Jata Shankar, Secretary of the petitioner association to receive the estimated compensation but the petitioner did not approach the authorities for receiving the compensation. Subsequently, another notice was sent to the petitioner association on 3 February 2015 which was received by the President but no one had turned up to receive the compensation.

43. Learned counsel for the petitioner, however, submitted that the notice dated 16 November 2013 was addressed to Kashi Jeevdaya Vistarini Goshala Pashushala, resident of Bhutahi Imali Shahar, Varanasi and the subsequent notice dated 3 February 2015 was addressed to Sri Ashok Shah (President). The endorsement made in the notice dated 16 November 2013 indicates that the Process Server was asked to serve it in the office situated behind Kotwali and when the Process Server went there one Rakesh present there read the notice but refused to accept it. The documents on record sufficiently established that efforts were made to inform the petitioner to receive 80 per cent of the estimated compensation but the petitioner did not turn up in the office to accept the amount. It cannot, therefore be contended that the provisions of Section 17

(3-A) of the Act had not been complied with.

44. Learned counsel for the petitioner also submitted that possession of the land was not taken in accordance with law. Learned Chief Standing Counsel has, however, stated that possession of the land was taken under Section 47 of the Act.

45. We find from the records that there is no pleading in the writ petition regarding this submission of the petitioner that possession was not taken in accordance with law. The records, however, indicate that possession was taken under Section 47 of the Act and it was handed over to the acquiring body on 7 February 2015. The award under Section 11 of the Act has also been made on 25 July 2015 and the petitioner has been informed to collect Rs. 11,83,85,797/-. It has, however, been stated that no person has appeared before the authorities to collect the amount.

46. There is, therefore, no merit in any of the contentions raised by the learned counsel for the petitioner.

47. The writ petition is, accordingly, dismissed.