

(1991) 08 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No's. 13587, 15376 to 15384 and 23620 to 23634 of 1990 and 3508 to 3510 of 1991

K.V. Ramachandra Rao

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 06-08-1991

Acts Referred:

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

Citation : (1991) ILR (Kar) 2920 : (1991) 2 KarLJ 505

Hon'ble Judges : Mohan, C.J.; Hanumanthappa, J

Bench : Division Bench

Advocate : T.J. Chouta, Mohandas N. Hegde and Jayakumar S. Patil, for the Appellant; S. Shivaram, Government Advocate for R-1 and R-2, Shylendra Kumar, Sr. Central Govt. Stdg. Counsel for R-3 and B.P. Holla, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, C.J.—All these Writ Petitions can be disposed of by a Common Order since they question the validity of the land acquisition proceedings, particularly the invocation of urgency clause viz., Section 17 of the Land Acquisition Act, 1894, (hereinafter referred to as the Act).

2. The facts leading to these Writ Petitions may briefly be stated as follows:-

The Mangalore Super Thermal Power Project (hereinafter referred to as the Project) is a Project under the National Thermal Power Corporation Ltd. (hereinafter referred to as the Corporation). The Corporation is a Generating Company incorporated under the Electricity (Supply) Act, 1948. It has its registered office at NTPC Bhavan, Scope Complex, No. 7, Lodhi Road, New Delhi. The Corporation was set up by the Government of India in the year 1975. The object of setting up this Corporation is to supplement the shortfalls in the requirement of electrical energy by the various States. The Corporation set up various Super Thermal Power Projects in different parts of the Country, and it is

now proposing to set up one such Project in Dakshina Kannada District of the Karnataka State, primarily for the benefit of the people of the Karnataka State. As a matter of fact the then Chief Minister wrote as early as 4th October 1988 to the Minister for Energy, Government of India, as follows:

"Dear Shri Vasant Satheji,

As you are aware, Karnataka State has facing a grim situation on the power front especially because of its heavy dependence on hydro-power (more than 80%). The continuation of drought during the last four years had hit power production in the State adversely. As against a connected load of around 7300 MW in the Karnataka Grid, the State has an installed capacity of only 2529 MW as on today. The energy availability from the internal sources is only of the order of 7800 MU as against a total projected unrestricted demand of 18420 MU. Taking into account, the State's share of energy available from the Central Projects in the southern Region and also the possible imports from other States, we can at best muster around 14366 MU only. Even the projects under implementation with an aggregated installed capacity of 1200 MW would not be able to meet the growing demand for ..electrical power, in the State. In fact it is estimated by 1994-95 the demand gap would exceed 1000 MW at least. You will agree that such continuing shortage of power would cripple the growth of the State both on the industrial and agricultural fronts.

With a view to meet the growing power demand, it would be necessary for the State Government to add large blocks of power during the 8th and 9th Five Year Plan periods by taking up Super Thermal Power Stations at suitable locations. Karnataka Power Corporation has investigated and prepared a feasibility report for the establishment of a Multifuel Thermal Power Station at Nandikur near Mangalore. This site has infrastructure facilities necessary for a Thermal Power Station of an ultimate installed capacity of around 2000 MW. The Project Report for the I stage of the Project has been submitted to the Central Electricity Authority and other agencies of the Government of India, for clearance. The necessary data and clarifications to the various agencies have been already submitted and we are expecting the clearance of the project from various angles for implementation.

At this stage, I would like to bring to your notice that Government of India have not made so far any investments in power projects in the State of Karnataka. I therefore, request Government of India to direct the NTPC to take up the implementation of Multifuel Thermal Power Station at Nandikur near Mangalore as a part of their programme of achieving the additional power generation capacity in the Country during the 8th plan period. However, NTPC should plan for installing in the first phase itself 1260 MW or at least 1000 MW capacity and an ultimate installed capacity of 2000 MW at this Station so that there is substantial addition of generation capacity in the State and the Region, in such a case, I presume that additional power in proportion to the investment made by the State in this project would be allotted to our State as an additionality to the

share of the power that as the home State would normally get out of a Central Project as per norm in force.

I trust you will give your considered thought to this matter and issue necessary suitable instructions to Ministry of Energy and to NTPC to take up the implementation of Multifuel Thermal Power Station at Nandikur near Mangalore, immediately. The State Government and the Karnataka Power Corporation would give the necessary assistance in taking up this project. I would be grateful if a decision on this matter is taken early.

Yours sincerely, Sd/- S.R. Bommai."

The Project is to be set up in various stages. The first stage has the capacity of 420 MW with ultimate capacity of 2420 MW. In view of paucity of power supply in the Southern Region and the dismal situation with acute power shortages it was decided to set up the Project in question at Nandikur in Udipi Taluk, Dakshina Kannada District. The lands in Nandikur and other surrounding villages in Udipi Taluk came to be selected after carrying out a detailed tech no-economic survey and various other tests. While selecting the said lands, the Authorities also took into consideration that the displacement of the families shall be to the minimum extent. As such 2500 acres of private lands required to be acquired, out of which an extent of about 73% are dry lands. Therefore, acquisition proceedings under the Act were initiated. Preliminary Notification u/s 4(1) of the Act, at the same time invoking the urgency clause viz., Section 17 of the Act, was issued on 5-2-1990. The same was published in Karnataka Gazette dated 22-2-1990. At a High Level Meeting held by the State Government, a decision was taken on 15-7-1989 that the Land Acquisition Cell might be advised to expedite the work of acquisition so that possession of lands could be taken and delivered to the Corporation by November 1989. Top priority was given to the Project. The District Revenue Authorities came to the conclusion that unless and until Section 17(1) of the Act was invoked thereby the process of acquisition was expedited, it would not be possible to complete the work of acquisition of lands quickly. Thus the Preliminary Notification u/s 4(1) read with Section 17(1) of the Act dispensing with the statutory enquiry u/s 5A of the Act, was issued. Pursuant to the said Preliminary Notification, Declaration u/s 6 of the Act was made on 28-6-1990 and published in the Karnataka Gazette on 19-7-1990 in respect of various lands including the lands of the petitioners. Thereafter notices were issued and served on the petitioners for holding an enquiry to pass Awards as provided u/s 11 of the Act. All possible steps have been taken for passing the Awards and to take possession. It was at this stage these Writ Petitions have come to be preferred.

3. The petitioners who are all owners of small holdings, question the acquisition only on two grounds. Mr. Mohandas N. Hegde. learned Counsel for the petitioners, argues that as early as 21-10-1989 a decision to dispense with statutory enquiry u/s 5A of the Act was taken with respect to an extent of 1433.19 Acres of land. If that be so, the invocation of urgency clause by

resorting to Section 17(4) of the Act is bad in law in other words, no real urgency is made but. It is only when the acquisition proceedings cannot brook delay of even 30 days, urgency clause could be invoked. In support of this, reliance is placed on Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, . In Krishi Utpadan Mandi Samiti, Muzaffarnagar (U.P.) Vs. Ratan Prakash Mangal and Others, the invocation of urgency clause was found to be imminent and therefore that was justified; but here in this case no such imminence exists. Courts have always taken the view that where an urgency clause is invoked as a matter of course that would be bad in law. Learned Counsel cites K. Seshagiri Maller and Others Vs. Special Tehsildar for Land Acquisition, Kozhikode and Another, , Acchanaik Vs. The State of Mysore and Another, etc.

The second ground of attack is that even before the approval of the Project, the construction of staff quarters had gone on, and the public money should not be spent in that way.

4. In opposition to this, Mr. U.L. Narayanarao, learned Counsel appearing for the Corporation, would submit that as early as 18-8-1989 a Notification was issued u/s 29(2) of the Electricity (Supply) Act, 1948, for setting up Mangalore Super Thermal Power Station at Nandikur, Udipi Taluk, calling for representations, and thereafter it was decided to settle this Project. On 12-9-1989, an Agreement was entered into between the Government of the Republic of India and the Government of the Union of Soviet Socialist Republics, for the establishment of the Project in question. On 17-9-1990 a High Power Committee on Ecology recommended the Project for clearance. On 29-11-1990 the Public Investment Board also recommended to the Cabinet Committee. The Cabinet Committee of Economic Affairs is to finally okay the Project. In the meanwhile, a question arose as to how the acquisition of lands should be proceeded with. On 21;10-1989 a decision was taken to invoke the urgency clause viz., Section. 17 of the Act. It was also decided to sanction the posts of 1 Special Deputy Commissioner, and 4 Special Land Acquisition Officers along with other staff for acquisition of lands in respect of the Project in question. Preliminary Notification was issued on 5-2-1990 and was published in the Gazette on 22-2-1990. Construction of quarters for Officers and officials for the Project was found absolutely necessary at the earliest stage. Therefore the Preliminary Notification was issued invoking the urgency clause i.e., Section 17 of the Act. The work of the Project had to be completed within the time schedule viz., by the end of VIII Five Year Plan viz., March 1995. For the purpose of completing and commissioning of a Mega Thermal Power Plant of such a high magnitude the minimum time required from the date of availability of lands will be about 5 years. Therefore, should the lands be made available in 1990, the Project would be completed by 1995. The Project has a capacity of 2420 MW. Any delay in completing and commissioning the same would incur generation loss to the tune of 7 crores every day. Further, there would also be indirect loss to the extent of several crores of rupees incurred by the consumers of power. Therefore, this is fit case for invoking the urgency clause, and it has been rightly invoked. Having

regard to the fact that this is a Russian-aided project, the completing and commissioning of the Project have been jointly agreed to by both the Governments as a time bound programme. The contention of the petitioners that the urgency clause has been invoked as a matter of course is totally unwarranted, nor can it be said that there is no application of mind before the invocation of the urgency clause.

As regards construction of quarters for the Officers and officials of the Project, it is absolutely essential and therefore it was taken up at the earliest stage. Thus it is submitted that there are no merits in these Writ Petitions.

5. The learned Government Advocate adopts the arguments of Mr. U.L Narayana Rao.

6. Having regard to the above submissions, two questions which arise for our consideration are:

(i) Whether invocation of urgency clause viz., Section 17 of the Act is justified? and

(ii) Whether construction of quarters for Officers and officials before the completion of the Project is valid?

7. Point No. 1:

The law with reference to the invocation of urgency clause viz., Section 17(4) of the Act may now be seen. The said Section reads as follows:

"17. SPECIAL POWERS IN CASES OF URGENCY:

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

Two conditions necessary for the invocation of this urgency clause, as stated in Commissioner of Income Tax, Bombay City I Vs. National Storage Pvt. Ltd., are: (i) there must be urgency, and (ii) the land must be waste or arable. The opinion which the Government has to form under this Section thus relates both to the urgency as well as the nature and condition of the land. The subjective satisfaction of the Government in respect of these two objective factors is a condition precedent for the exercise of power to give direction u/s 17(4) of the Act. However, it requires to be stated that the words "waste or arable" have been omitted by the Amending Act 68/1984. Therefore, the question would be whether urgency exists in this case or not. As to how the Project in question itself came to be conceived, we have got to refer to the following sequence of events:-

On 18-8-1989 a Scheme came to be published in the following terms:

"NTPC BHAVAN, SCOPE .COMPLEX, 7, INSTITUTIONAL AREA, LODI ROAD, NEW DELHI-3.

Ref .No. 01 SECTIGN 16 Dated: 18-8-1989 MANGALORE SUPER THERMAL POWER STATION STAGE I (2 x 219 MW)

Notification of the Scheme u/s 29(2) of the Electricity (Supply) Act 1948 as amended.

Whereas in exercise of its powers u/s 28 of the Electricity (Supply) Act, 1948, as amended, National Thermal Power Corporation Limited, New Delhi, Power Generating Company set up by the Government of India under the aforesaid Act (hereinafter referred to as "Generating Company") with a view to meeting the growing demand for power in southern region, has prepared a scheme for establishment, construction and operation of generating station, tie lines, sub-stations and associated transmission lines in the States of southern region being located at village Nandikur, Taluk Udipi, District O.K. of Karnataka State (hereinafter referred to as "Mangalore STPS"): The details of the said scheme are given below:

Salient features of the Scheme:

The Power Station facilities of the Mangalore STPS will include two 210 MW capacity generating units with all associated facilities and auxiliary equipment including pollution control equipments such as Electro-Static precipitators etc/ The associated transmission system proposed for the Mangalore STPS consists of the following:

- a) Mangalore (Karnataka) - Hassan (Karnataka) 400 Kv D/c.
- b) Mangalore (Karnataka) - Mercara (Karnataka) 220 Kv D/C line 35 kms.
- c) Loop-in-Loop-out of existing Shimoga (Karnataka) Mysore (Karnataka) 220 Kv D/C line of Karnataka Electricity Board (KEB) at Hassan (Karnataka) sub-station.
- d) 2 Nos. each 315 MVA 400/220/Kv auto-transformers at Mangalore (Karnataka) and Hassan (Karnataka) sub-station.
- e) 1 No. each 315 MVA 400/220 Kv auto-transformers at Munirabad (Karnataka) and Cuddapah (Andhra Pradesh) sub-sections along with establishment of 220/400 kv. switch yard at Mangalore STPS (Karnataka), Extension of KEB - 220 Kv sub-station at Mercara (Karnataka), a new 220/400 kv. sub-station at Hassan (Karnataka) and extension of two NTPC 400 Kv sub-station at Munirabad (Karnataka) and Cuddapah (Andhra Pradesh).

The coal for the power station shall be supplied from Talchar Coal Fields in Orissa, Coal will be transported by rail from Talcher to Paradip Port, from Paradip Port Coal will be shipped to Mangalore Port and from Mangalore Port transported to the power station by rail.

The cooling water system will be once through type water shall be drawn from Mulki river and after use and proper treatment shall be discharged back into the sea.

LOCATION AND TIME SCHEDULE:

The Mangalore STPS along with its township is proposed to be located at village Nandikur, Taluk Udipi, District Dakshina Kannada of Karnataka State. The benefits from the said scheme in the form of power generation would commence towards the end of the eighth plan (1990-95).

ESTIMATED COST OF THE SCHEME:

The estimated cost of the proposed scheme is Rs. 897.06 crores including Rs. 98.21 crores for the associated transmission system.

POWER OF THE GENERATING COMPANY UNDER THE INDIAN TELEGRAPH ACT, 1884.

For the proper and efficient execution of Mangalore STPS the Generating Company shall have all necessary powers in accordance with the provisions of Section 42 of the Electricity (Supply) Act, 1948 and shall also exercise the said powers including the powers which the Telegraph Authority possess under Part-III of the Indian Telegraph Act, 1884, with respect to a telegraph establishment maintained by the Government or to be so established or maintained. Notice is hereby given u/s 29(2) of the said Act that any licensee or other person so interested may make his representation, if any, within two months from the date of publication of this notification. Thereafter no further representations will be considered.

BY ORDER OF NATIONAL THERMAL POWER CORPORATION LTD.

Sd/- D.K. Bebbber, COMPANY SECRETARY."

On 12-9-1989 an Agreement was entered into between India and Soviet Russia, relevant portions of which read as follows:-

"The Government of the Republic of India and the Government of the Union of Soviet Socialist Republics.

Recalling the close and mutually beneficial cooperation between the two Countries in diverse fields of industry, economy and commerce,

Desirous of strengthening this cooperation in the interest of the peoples of both Countries and in accordance with the objectives of the Treaty of Peace, Friendship and cooperation between the Republic of India and the Union of Soviet Socialist Republics of August 9, 1971,

Guided by the Agreement on the main directions of economic, trade, scientific and technical cooperation between the Republic of India and the Union of Soviet Socialist Republics for the period of upto 2000, dated 22 May 1985, and by the

protocol between the Government of Republic of India and the Government of the Union of Soviet Socialist Republics on Economic and Technical Cooperation in the power projects signed on November 20, 1988.

Striving to further develop and strengthen economic and technical cooperation between the two Countries,

Have agreed as follows:

Article 1: The Government of the Republic of India and the Government of the Union of Soviet Socialist Republics shall, through the competent Soviet and Indian organisation, cooperate in the setting up on the territory of India of the stage-I of the Thermal Power Plants "Maithon" of the capacity of 840 MW/with four units of 210 MW each/, "Kayamkulam" of the capacity of 420 MW/with two units of 210 MW each/, and "Mangalore" of the capacity of 420 MW/with two units of 210 MW each.

xxx xxx xxx

Article 3: For the purpose of implementing cooperation provided for herein the Soviet organisations shall:

render technical assistance to the Indian organisations, on request, in the selection of construction sites, elaboration of general layout plan, collection of initial data required for engineering design, for which Soviet Specialists shall be deputed to India, in numbers, by specialties, for the periods and on the terms and conditions to be agreed upon between the organisations of the both Countries.

xxx xxx xxx

Article 4: For the purpose of implementing the cooperation provided for herein, the Indian organisations shall -

xxx xxx xxx

put at the disposal of the Soviet organisations, free of charge, land plots free from any encumbrance or installations hampering the construction, as well as ensure, necessary, the connection of the projects under construction to the off-site installations, where necessary.

xxx xxx xxx Article 6: For the purpose of implementing the cooperation in setting up the TPPs mentioned in Article 1, the Government of the USSR shall extend to the Government of the Republic of India a credit of an amount of upto 600 million Roubles at 2.5 per cent annual interest.

xxx xxx xxx Article 10: xxx xxx xxx The Government of the Republic of India shall commence repayment of the credit utilised in accordance with this Article in five equal annual instalments commencing after six months from the commissioning of the first unit of each of the mentioned above TPPs, but not later than October 1, 1995.

xxx xxx xxx"

(Underlining is ours)

This will clearly go to show that it is a time bound programme, it is also seen from the records that this Project is to be carried out within five years viz., by the end of the VIII Five Year Plan i.e., March 1995. The land acquisition proceedings must be completed within a period of one year or at any rate 1 1/2 years so that the remaining period of 3 1/2 or 4 years could be utilised for levelling, construction of buildings, installation of machinery, commissioning and laying of transmission lines etc. It was under these circumstances that as early as 21-10-1989 it was decided to invoke the urgency clause. As a matter of fact, the files produced by the learned Government Advocate clearly establish how the matter was considered from all angles including rehabilitation and the necessity to acquire lands by invoking the urgency clause. In fact, a request was made by the Corporation to the Deputy Commissioner in the following manner:

"NATIONAL THERMAL POWER CORPORATION LTD.

Padubidri 5-10-1989

To

The Deputy Commissioner, Dakshina Kannada District, MANGALORE.

Sir,

Sub: Land Acquisition - Mangalore Super Thermal Power Project - Ash Bund - Requisition - submitted.

The-Requisition for Acquisition of Lands for Mangalore Super Thermal Power Project - ASH BUND - is submitted herewith in 4 sets with statements separately for private lands and Government Land as decided in the Meeting held in the office of the Deputy Commissioner, Mangalore on 13-9-1989. An abstract of the total lands required is also enclosed as per Annexure-II.

As the lands are very urgently required, I request you kindly to apply "Urgency Clause" for Acquisition of these lands.

I request you kindly to take further action in respect of Government lands and arrange to hand over the same as early as possible,

Requisition in respect of lands for other purposes will be submitted shortly.

Yours faithfully, Sd/- CHIEF CONSTRUCTION MANAGER."

It is therefore futile on the part of the petitioners to contend that urgency clause has been invoked as a matter of course.

The Statement of Objections also makes this position clear in paragraph-3 (Statement of Objections in W.P. 13587/1990) which reads as follows:

"3. It is denied that the invocation of the urgency clause and also the dispensation of the enquiry u/s 5A of the Act are arbitrary and the decision to that effect and also the orders thereon have been taken and have been passed by the authorities concerned without the application of mind. It is also denied that the orders u/s 17 of the Act had been passed prior to the issue of the said preliminary notification. As stated above, it is submitted that a decision was taken on 21-10-1989 for invocation of the urgency clause and at the earliest, after observing certain formalities, the said preliminary notification was issued and published. In this connection it is further submitted that as per the order of the State Government dated 21-10-1989 in No. RD 35 LAG 89, it was also decided to sanction the posts of one Special Deputy Commissioner and 4 Special Land Acquisition Officers along with the other subordinate staff for acquisition of lands in respect of the project in question. However, the posting of officers/officials to those posts could not be done in time by the State Government due to the General Elections, Elections to the Corporations/ Municipalities and also the Census work. However, ultimately, the said preliminary notification was issued on 5-2-1990 and published in the Karnataka Gazette dated 22-2-1990. It is also further submitted that the construction of the quarters for the officers, officials of the Mangalore Super Thermal Power Project is absolutely necessary at the earliest stage. Hence the said preliminary notification was issued invoking the urgency clause. The work of the project in question has to be completed and it has to be commissioned within a time bound programme i.e., by the end of the 8th Five Year Plan viz., March 1995. Hence for the purpose of completing and commissioning of a Mega Thermal Power Plant of such a high magnitude, the minimum time required from the date of availability of the lands is about 5 years. Thus, if the lands are made available by the end of 1990, the houses in the township could be constructed and the employees who are posted to work and presently scattered at different places could be housed therein so that their services are available and also could be made use of round the clock continuously for the project work. After the completion of the houses in the township, the avenues of employment would also increase as action for recruitment to various posts would be initiated and the people residing in and around the project would be benefitted by the same. The project in question in all is of the capacity of about 2420 MW and any delay in completing and commissioning of the same would incur generation loss to the tune of Rs. 7 crores everyday. In addition to this, there would also be indirect loss to the extent of several crores of rupees incurred by the consumers of power. It is respectfully submitted that in view of the urgency as stated above and also the utmost priority that has to be given to the project in question, the emergency clause as contemplated u/s 17 of the Act has been invoked by the authorities concerned."

In this factual background we will now refer to the cases relied on by the petitioners.

8. It is true that urgency clause viz., Section 17 of the Act cannot be invoked in a

mechanical fashion. In RADHAKRISHNA CHETTIAR v. STATE OF MADRAS 1956 MLJ 279 it was held as follows:

"The question is whether the power in regard to Section 17(4) was validly exercised in the present case. It is not in dispute that it is for the Government to be satisfied as regards the urgency and not for the Court to investigate whether in its opinion the urgency was made out or not. In this connection it is sufficient to refer to the decision of this Court in Natesa Aasari v. State of Madras (1953 M.L.J. 684) where Venkatarama Ayyar, J. delivering the Judgment of the Bench said:

"What all is required u/s 17(4) is that the Government must be satisfied that there is such urgency as is contemplated by Section 17(1). If they are so satisfied they are entitled to pass an order u/s 17(4) suspending the application of Section 5(a) and that, is what has been done in this case."

But this is far from authority for the proposition that the urgency that is referred to in Section 17(2) and which is the basis for the order to take immediate possession of the land before the award of the acquiring officer, might be an urgency which does not arise from the necessity to enter on the land, the necessity for having a road immediately which might not brook delay, but might arise out of the necessity to prevent the expiry of the three year period specified at the end of Section 34 of the Town Planning Act."

The above extract will clearly show how the present case is distinguishable.

In K. Seshagiri Maller and Others Vs. Special Tehsildar for Land Acquisition, Kozhikode and Another, it is held as follows: [Headnote (b)]

"When the Government publishes the notification u/s 17(4) directing that Section 5A will not apply to the case after a delay of nearly two months after they decided about the urgency which required such dispensation, it has to be held that their exercise of the power is an abuse of the powers conferred by Sub-section (4).

Under Section 17(4) the Government have to form an opinion about the applicability of Section 17(1) or Section 17(2). When they so form an opinion and decide to dispense with the provisions of Section 5A they must be fully aware that a very valuable right statutorily conferred by Section 5A on a citizen to object to the acquisition proposed is taken away. Section 5A gives only 30 days time to a person affected or interested to file his objection to the proposed acquisition by a notification u/s 4(1). Therefore the emergency that would justify the dispensation of Section 5A under Sub-section (4) must necessarily be an urgency which will not brook a delay of 30 days as contemplated in Section 5A."

Having regard to the fact that the Project in question is a time-bound programme, this Decision will have no application. As already stated, while considering the nature and scope of the Project and its establishment on a priority basis, the decision to invoke the urgency clause was taken on

21-10-1989. That was prior to the issue of the Preliminary Notification dated 5-2-1990. Certainly, therefore, it cannot be said that it is that satisfaction which is material for the purpose of deciding whether the urgency clause had been properly invoked. Such invocation of urgency clause viz., Section 17(4) of the Act is a sequel to the decision to go ahead with the acquisition evidenced by Notification u/s 4(1) of the Act. We are unable to see how the petitioners could talk of the decision taken on 21-10-1989 and contend that the matter could brook delay.

In Narayan Govind Gavate's case, the Head-note reads thus:

"Section 17(4) cannot be read in isolation from Sections 4(1), and 5A of the Act. The immediate purpose of a notification u/s 4(1) of the Act is to enable those who may have any objections to make to lodge them for purposes of an enquiry - u/s 5A of the Act. It is true that although only 30 days from the notification u/s 4(1) are given for the filing of these objections u/s 5A of the Act; yet sometimes the proceedings u/s 5A are unduly prolonged. But, considering the nature of the objections which are capable of being successfully taken u/s 5A, it is difficult to see why the summary enquiry should not be concluded quite expeditiously. The purpose of Section 17(4) of the Act is obviously not merely to confine action under it to waste and arable land but also to situations in which an inquiry u/s 5A will serve no useful purpose or, for some overriding reason, it should be dispensed with. The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings u/s 5A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry u/s 5A which has to be considered. Section 17(2) deals with a case in which an enquiry u/s 5A of the Act could not possibly serve any useful purpose. Sudden change of the course of a river would leave no option if essential communications have to be maintained. It results in more or less beyond human control, what land should be urgently taken possession of. Hence, it offers no difficulty in applying Section 17(4) in public interest. And, the particulars of what is obviously to be done in public interest need not be concerned when its validity is questioned in a Court of justice. Other cases may raise questions involving consideration of facts which are especially within the knowledge of the authorities concerned. And, if they do not discharge their special burden imposed by Section 106, Evidence Act without even disclosing a sufficient reason for their abstention from disclosure, they have to take the consequences which flow from the non-production of the best evidence which could be produced on behalf of the State if its stand was correct."

This Decision does not afford any assistance to the petitioners.

Again in K.U.M. Samiti's case, it is stated in the Head-note thus:

".....After the issue of the earlier Notification dated 26th October 1978 a period of nearly 3 1/2 years had expired when the fresh notification dated 20th May 1982 u/s 4(1) was issued and apparently the necessity to acquire plot in

question during this period became more acute due to this delay. Further, the urgency had become more imminent on account of the direction issued by the Supreme Court in a petition challenging the Notification u/s 7(2) (b) of U.P. Act No. 25 of 1964. Therefore the opinion of the State Government that it was a fit case to invoke Section 17(4) of the Act could not be said to be invalid on the ground that there was no basis or material in support of that opinion."

This is a case where the invocation of urgency became imminent on account of the direction by the Supreme Court, and therefore it was upheld. The contention that no such imminence exists in this case is unwarranted since the project in question is a time-bound programme.

In *Acchanaik Vs. The State of Mysore and Another*, the Head-note reads:

"The Court is entitled to enquire when a challenge is made against the Notification issued u/s 17(4) of the Act whether the Government have applied their mind; and if so, whether their opinion regarding the urgency of the matter was founded on relevant facts and circumstances. It is open to the Court to scrutinise whether the Government have exercised the power on mala fide grounds. If the opinion was formed without materials or on irrelevant matters or on mala fide grounds or ex facie arbitrary, the Court will strike down the impugned Notification."

Examined in the light of this Decision, we find the opinion formed by the Government to invoke the urgency clause viz., Section 17(4) of the Act was based on valid material.

The Decision in *SHANKAR PUNDALID GIRAP v. STATE OF KARNATAKA* 1988 (1) Kar 583 relied on by the petitioners also does not render much assistance to them as the said Decision was rendered following the Decision in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, .

Therefore, we conclude that the invocation of the urgency clause -Section 17(4) of the Act - was fully justified in the instant case, more so when the Project in question is a time-bound programme.

9. Point No. 2:

We have already quoted paragraph-3 of the Statement of Objections in W.P.13587/1990 filed by the Corporation. It is seen therefrom that as per the orders of the State Government dated 21-10-1989 in No. RD 35 LAQ 89, the State Government decided to sanction the posts of one Special Deputy Commissioner and 4 Special Land Acquisition Officers along with other staff for acquisition of lands in respect of the Project. Therefore, construction of quarters for the Officers and officials of the Project is necessary at the earliest stage. Otherwise, the acquisition cannot validly go on, nor the Mega Thermal Power Plant of such a magnitude can be completed within the due date. Construction of houses would enable the Officers/officials who are posted to work and who are presently scattered at different places, to occupy them in order that their

services are available round the clock for the purposes of the Project. Therefore it cannot be denied the construction is a must, in this view of the matter, it is difficult to accept the contention that the construction of quarters even before the establishment of the Project would amount to misuse of public money.

10. For the reasons sated above, we conclude that there are no merits in these Writ Petitions and accordingly dismiss the same. No costs.