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**(2012) 05 UK CK 0036**

**In the Uttarakhand High Court**

**Case No :** Writ Petition No. 1131 (M/S) of 2007 ( Old No. 607 of 2003 (M/B)

Lord Mahadev Trust

APPELLANT

Vs

State of Uttaranchal and three others

RESPONDENT

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**Date of Decision :** 02-05-2012

**Acts Referred:**

Constitution of India, 1950 — Article 14, 21

Land Acquisition Act, 1894 — Section 16, 17, 17(1), 17(4), 3

Uttar Pradesh (Temporary) Accommodation Requisition Act, 1947 — Section 3

**Citation :** (2013) 2 UC 909

**Hon'ble Judges :** Brahma Singh Verma, J

**Bench :** Single Bench

**Advocate :** Rajendra Dobhal, assisted by Sri Paresh Tripathi, for the Appellant;  
B.D. Upadhyay, A.A.G., on behalf of respondents., for the Respondent

**Final Decision :** Dismissed

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**Judgement**

Hon"ble B.S. Verma, J.—means of this petition, the petitioner has sought the following relief:-

(1) To issue a writ, order or direction in the nature of certiorari quashing the entire proceedings, notification and declaration dated 20-05-2003 and 16-06-2003, issued by respondent No.1, contained as Annexure No.3 and 5 respectively to the writ petition.

(2) To issue a writ, order or direction in the nature of mandamus commanding the respondents to hand over the possession of the property of the petitioner to the petitioner and not to create any hindrance in the smooth and peaceful possession of the petitioner over the property in question.

(3) To issue any other writ, order or direction which this Hon"ble Court may deem fit and proper in the nature and circumstances of the case.

(4) To award the cost of the petition to the petitioner.

Briefly stated the facts of the case, according to petitioner, are that the petitioner is a registered trust created on 30-05-1997. The petitioner purchased land for running the software training institute and for starting new technical institution offering diploma or under graduate degree, and submitted application to All India Council for Technical Education, Indira Gandhi Sports Complex, New Delhi. On 6-7-2000 the All India Council for Technical Education wrote to the petitioner that the proposal of the petitioner to approve the course for the year 2000-2001 is not granted and further it was informed that the application of the petitioner can be considered for the year 2001-2002 and to furnish the information by 18-8-2000. During the pendency of these proceedings, U.P. Re-organization Act, 2000 was enacted by the Parliament and the State of Uttaranchal was formed on 9-11-2000 and Dehradun became the capital of the State. The further case of the petitioner is that after purchasing the house No. 23, Lakshmi Road, Dehradun, applied for the mutation in the office of Nagar Nigam, Dehradun and the house was mutated and the information of mutation of house in the name of petitioner was communicated to the petitioner vide order dated 1-12-1999. It is further case of the petitioner that the petitioner trust is engaged in providing and promoting the educational activities having various institutions in 16 cities and is also running Rai University and in furtherance of aforesaid view the petitioner purchased property numbered as 23, Lakshmi Road Dehradun having the area of 4,061.33 squire meters ( 5 Bighas and 2 Biswas) on 1.4.1999 by means of a registered sale deed for an amount of Rs. 50 lakhs and for registration of the said sale deed Rs. 5 lakhs were also paid by the petitioner as stamp duty. The property in question was requisitioned by the respondents in a most illegal and arbitrary manner even without issuing and serving any notice on the petitioner and no publication was made in that regard. The petitioner filed writ petition no. 165 of 2002 challenging the requisition on various grounds. The Hon''ble High Court vide order dated 6-5-2003 directed the respondents either to hand over the possession to the petitioner within ten days or to acquire the same under the Land Acquisition Act. On 20-05-2003 the notification u/s 4 of Land Acquisition Act (hereinafter referred as "the Act"), has been issued by the respondents and in the said notification the provisions contained u/s 17(4) of the Act have been invoked and the right to file objection as provided u/s 5(A) of the Act has been taken away. It is alleged by the petitioner that the impugned notification dated 20-5-2003 cannot be said to have been issued in the public interest as the opening of an office cannot be termed to be public interest as against the opening and running of an educational institution. It is further case of the petitioner that provisions contained u/s 17(4) of the Act are to be invoked in case of urgency and the declaration u/s 6 is to be made immediately after the notification issued u/s 4 of the Act. Further the acquisition in the case at hand has been made on the dictates of Director Koshagar Evam Vitta Sevayen Uttaranchal as is evident from the letter dated 8-5-2003 and the acquisition cannot be said to be in public purpose. It is also alleged by the petitioner that since the respondents are already in possession of property in question since 11-5-2001, therefore, there was no occasion for invoking the urgency clause

provided in Section 17(4) of the Act. Further despite invoking the urgency clause as provided u/s 17(4) of the Act, the declaration u/s 6 has been issued only on 16-6-2003, while the notification u/s 4 was issued on 20-5-2003 and this aspect of the matter clearly shows that the provisions of Section 17(4) have been invoked in a most illegal and arbitrary manner only with a view to snatch away the right to object as provided u/s 5(A) of the Act and therefore the impugned exercise apart from being illegal also suffers from the vice of colorable exercise of power.

2. It is also the case of the petitioner that the respondents have not valued the property as per the market rate prevalent according to present market rate and the value of the property is around 2.50 crores and the State can easily purchase some other accommodation at the cost of Rs. 95 lakhs. The Government approved valuer, after a thorough enquiry valued the property and submitted report that the total market value of property is Rs. 1,79,04,413.67P. The total area of land is 4061.33 meters and the covered/building area is 771.39 Squire meter (ground floor 445.58 squire meter and first floor 325.35 squire meters).

3. The impugned acquisition is malafide and also suffers from the vice of having been passed in colorable exercise of power and is violative of fundamental rights of the petitioner guaranteed under Article 14 and 21 of the Constitution of India.

4. The respondents have filed the counter affidavit alleging therein that the property in question was previously requisitioned u/s 3 of U.P. Accommodation Requisition Act 1947 and subsequently the proceeding of acquisition was initiated under the Land Acquisition Act in view of the direction of this Hon"ble Court dated 6.5.2003 passed in writ petition No. 165 of 2002. The Director, Treasury and Finance Services, Uttaranchal, Dehradun, vide its letter dated 8-5-2003, requested to acquire the premises in question in public interest and the Special Land Acquisition Officer, Dehradun informed the Director, Treasury and Finance Service Uttaranchal Dehradun to deposit 10% of the total estimated cost and a sum of Rs. 10 lakhs in lump-sum was deposited and consequently the District Magistrate proceeded with under Section-4 of the Act invoking urgency clause U/ S 17 of the Act as the matter is in the interest of public at large. It is further alleged in the counter affidavit that the property in question was in dilapidated condition and was lying vacant and was unused hence notice to this effect was issued which was published in news paper and also notified in the Gazette and the Department took possession of the building in question on 14.5.2001 after completing all the legal formalities, wherein many offices under the control of Finance Department are running. The petitioner challenged the requisition proceeding in the year 2002 by filing the writ petition no. 165 of 2002 and in compliance of order passed by the High Court in the above writ petition, the property was acquired. It is further asserted that the notices under Sections 4, 6 and 9 of the Act were published in accordance with the rules and procedure laid down in the Land Acquisition Act 1894. The property in question is being used for the offices under the Finance Department, which is for public purpose as well as

in the interest of public at large and not for the use of individual, hence it cannot be said there was no urgency in adopting the procedure U/S 17(4) of the Act.

5. In reply to counter affidavit the petitioner also filed rejoinder affidavit and alleged that for locating a public office the authorities can acquire only a premises or building but not the entire land and, therefore, the impugned acquisition proceeding under which the State has proceeded to acquire the entire land is not only illegal but is virtually against the mandate of the Act, and thus wholly without jurisdiction. It is further alleged that in view of Section 3(f) of the Act the legislature has not conferred the power to acquire an open land for locating a public office.

6. The respondents also filed supplementary counter affidavit and reiterated that the land was acquired for government offices for public purpose in large due to the great scarcity of accommodation for the office and officers for public purpose and the acquisition has been made as per provision of Section 17(4) of the Act.

7. I have heard learned counsel for the parties and perused the record. 8. In the instant writ petition the main question to be decided is "whether the land and building was acquired for public purpose, and there was an urgency in the matter to invoke Section 17 (4) of the Land Acquisition Act or not".

9. Learned counsel for the petitioner has submitted that the accommodation in question and its place is beneficial for the students in general and it is not at all good for running a government office and the acquisition cannot be said to be made in public purpose. He also submitted that in the present case there was no real and substantive urgency warranting invocation of urgency clause, dispensing with enquiry u/s 5-A of the Act and the notification issued is bad in law.

10. Learned counsel for the petitioner also submitted that satisfaction of government on the issue of urgency is subjective but is a condition precedent to the exercise of power u/s 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 the exercise of power is vitiated due to malafide or that the concerned authority did not apply mind to the relevant factors and the record, in the instant case the intention of respondents was malafide and the State Govt. did not apply its mind while invoking the urgency clause.

11. He also contended that the respondents are already in possession of the property in question since 11.5.2001 and therefore there was no question for invoking the urgency clause provided in Section 17(4) of the Act and despite there being no urgency reveals that the respondents are bent upon to grab the property of the petitioner and the intention to acquire the private property in question was malafide and the acquisition should be quashed.

12. Next it was contended that sub section 2 of Section 5-A makes it obligatory on the Collector to give the objector an opportunity of being heard and after hearing all objections and making further inquiry he is to make a report to the

appropriate government containing his recommendation on the objections, but in the instant case the obligation imposed by sub-section 2 of Section 5-A has not been adhered to.

13. The learned counsel for the petitioner in support of his contentions has relied on the following decisions:-

(1) Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, .

(2) Anand Singh and Another Vs. State of Uttar Pradesh and Others, .

(3) Prahlad Singh and Others Vs. Union of India (UOI) and Others, .

(4) Judgment dated 1-3-2007, delivered by Division Bench of this Court in Writ Petition No. 196/2006 (M/B) Rajiv Berry and others State of Uttaranchal and another.

(5) Judgment dated 3-5-2011, delivered by this Court in Writ Petition No. 275 (M/S) of 2010, Prem Singh Pawar and others versus State of Uttarakhand and others.

14. On the other hand learned Additional Advocate General has submitted that prior to acquisition, the property in question was already in the use of State Government and due to acute shortage of accommodation at Dehradun, the property in dispute has been acquired for the functioning of offices under Finance Department and the acquisition has been made in public interest and the act of State dispensing with inquiry U/S 5-A of the Act is based on real and genuine grounds, and the acquisition is fully covered u/s 17(4) of the Land Acquisition Act. Learned Additional Advocate General also contended that the question as to whether urgency exists or not is a matter solely for the determination of the Government and it is not a matter of judicial review.

15. Learned Addl. Advocate General has relied upon the following cases:-

1- Nand Kishore Gupta and Others Vs. State of U.P. and Others, .

2- A. Venkatachalapathy vs. State of Tamil Nadu and another, reported in AIR 1986 Mad 309.

3- Kashi Nath and others versus State of U.P. and others, reported in 1993 ALJ 154.

4- Ekta Welfare Society vs. Govt. of India and others, reported in 2003 U.D. 405.

5- State of U.P. and another versus Keshav Prasad Singh, reported in 1995 A.W.C. 1783.

6- Smt. Kailashwati Vs. State of U.P. and Another, .

7- First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, .

16. I have gone through the above cited cases on behalf of parties.

17. In the case of Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, , cited on behalf of the petitioner, the State Government issued notification u/s 4(1) read with Sections 17(1) and 17(4) invoking urgency clause to acquire land for alleged public purpose of planned industrial development in district through Greater Noida Industrial Development Authority and also dispensing with enquiry u/s 5-A. It has been observed by Hon''ble Apex Court that in the absence of any indication that industrial units were intended to be established on acquired land by State Government itself or through its agencies/instrumentalities, and Section 17(4) was invoked rather to cater private interest and not for public purpose and the notification u/s 17(4) was held not justified. It was further observed by the Hon''ble Apex Court that there was no real and substantive urgency warranting invocation of urgency clause and dispensing with enquiry u/s 5-A of the Act.

18. In the another case of Anand Singh and Another Vs. State of Uttar Pradesh and Others, cited on behalf of petitioner, the Land Selection Committee had identified land for housing colony in 2001, while notifications u/s 4 invoking urgency clause were issued on 22-11-2003/20-2-2004 and declaration u/s 6 was issued one year thereafter, it was held that invocation of urgency provision for planned development of city or for development of residential area or housing must not be as a rule but by way of an exception since such activities may take years and hence, there is no reason why summary enquiry contemplated u/s 5-A may not be held and objections not considered. It was also held that there was no justification for dispensing with enquiry by invoking Section 17(4). However, the appellants in that case were not granted any relief considering long passage of time, and the fact that out of 400 landowners more than 370 had already received compensation and more than 60% of proposed work was already completed. It was further observed by Hon''ble Apex Court that urgency provisions u/s 17 to eliminate enquiry u/s 5-A should be invoked only in deserving cases of real urgency. The Government should apply its mind to aspect of urgency and should be able to justify that the urgency is based on considerations which have a reasonable nexus for purpose for which it is to be exercised. Mere phraseology of urgency in notification is not enough.

19. In the next cited case of Prahlad Singh and others versus Union of India and others, reported in (2011) 5 Supreme Court Cases 386, the main issue was whether an acquired land could be treated to have vested in the State Government u/s 16 of the Land Acquisition Act, 1894 on the making of an award by the Collector though the actual and physical possession continued with the landowners. The Apex Court has observed that it is not possible to sustain the finding and conclusion recorded by the High Court that the acquired land had vested in the State Government because the actual ad physical possession of the acquired land always remained with the appellants and no evidence has been produced by the respondents to show that possession was taken by preparing a

panchnama in the presence of independent witnesses and their signatures were obtained on the panchnama. It was further observed by Hon"ble Apex Court that the vesting of land u/s 16 of the Act presupposes actual taking of possession and till that is done, legal presumption of vesting enshrined in Section 16 cannot be raised in favour of the acquiring authority. In the instant case the possession over property in dispute was already with the State Departments prior to invoking urgency clause.

20. In the judgment dated 1-3-2007, delivered by Division Bench of this Court in Writ Petition No. 196/2006 (M/B) Rajiv Berry and others State of Uttaranchal and another, the controversy related to issuance of notification U/S 6 of the Act, wherein nowhere the government has recorded its satisfaction considering the report made U/S 5-A(2) of the Act, and the Division Bench had quashed the notification issued U/S 4(1) as well as the notification issued U/S 6 of the Act. The facts of the cited case are different to the case in hand. In the cited case the acquisition was made for general need, for public schemes and for the extension of the Secretariat of Uttarakhand to the north and south and the notification was issued by invoking the emergency clause U/S 17 of the Act, by doing away with the statutory requirement of Section 5 of the Act. Further in the notification wrong and misleading impression was given that the land which was being acquired was rural land and it was being acquired for the development purposes. The notification U/S 4 was challenged before the High Court in writ petition No. 469 of 2004 and the High Court has passed order dated 30-10-2004 that in view of the urgency felt, public notice shall be given within seven days inviting objections and the Land Acquisition Officer shall hear the objection within fifteen days after giving full opportunity of hearing to parties. The Special Land Acquisition Officer vide order dated 30-12-2004 rejected the objections of parties and again issued notification U/S 6 by invoking urgency clause.

21. In the case at hand the Government Offices were already functioning on the disputed property and the Government has invoked urgency clause on the direction of the court within a stipulated period of ten days and the State Government issued notification U/S 4 by invoking urgency clause in bonafide public interest.

22. In the last cited Judgment dated 3-5-2011, delivered by this Court in Writ Petition No. 275 (M/S) of 2010, Prem Singh Pawar and others versus State of Uttarakhand and others, the land was being acquired for the construction of a Sub Station invoking urgency clause and by the acquisition approximately 85 families of the farmers was to be affected. Further it was alleged that construction and commissioning of Sub Station would take between 2 to 2 1/2 years. The learned Single Judge of this Court has observed that the existence of an urgency or unforeseen emergency is a condition precedent for invoking Section 17(4) of the Act. The counter affidavit and the supplementary counter affidavit of the State make it apparently clear that there was an urgency for the acquisition of the land for a public purpose, namely, for the construction of a Sub

Station/Power Grid in the State of Uttarakhand. But mere existence of urgency or unforeseen emergency is not sufficient to dispense with provision of Section 5-A of the Act, namely the hearing of the objections contemplated under the said provision. It requires an opinion to be formed by the State Government to the effect that along with the existence of urgency or unforeseen emergency there is also an eminent need to dispense with the provision of Section 5-A of the Act, and for this purpose the appropriate government is required to apply its mind on the dispensation of Section 5-A of the Act. As stated in the earlier part of this judgment also, that in the instant case the disputed building previously requisitioned u/s 3 of U.P. Accommodation Requisition Act 1947 and subsequently the proceeding of acquisition was initiated under the Land Acquisition Act in view of the direction of this Hon"ble Court dated 6.5.2003 passed in writ petition No. 165 of 2002, the notification U/S 4 was issued and the Government Offices were already in existence.

23. In the case of Nand Kishore Gupta and Others Vs. State of U.P. and Others, , cited on behalf of respondents, scope of "public purpose" has been dealt with and it was held that purpose complementary to public purpose is also public purpose. Construction of Yamuna expressway is work of immense public importance and acquisition of land along Yamuna Expressway for development of the same for commercial, amusement, industrial, institutional and residential purposes was complementary to creation of expressway, hence amounting to acquisition for public purpose.

24. In the case of A. Venkatachalapathy vs. State of Tamil Nadu and another, reported in AIR 1986 Mad 309, it has been laid down that in the matter of acquisition of land by Government, whether urgency exists for dispensing with provisions of Section 5-A by invoking Section 17(4) is to decide by the Government and that issue is not open for judicial review. In this cited case the purpose was only for construction of office and residential complex for the newly formed district of Kamarajar and the court has held that the court is not entitled to go into the question as to whether the decision was taken on proper material and in an objective manner. The district is admittedly a newly formed one. If urgency was felt to construct offices and residential complex for the officials for the newly formed district, it cannot be stated that the opinion was based on no facts not relevant or was based on facts at all. It is patent that there had been a proper application of the mind.

25. In the cited case of Kashi Nath and others versus State of U.P. and others, reported in 1993 Allahabad Law Journal 154, it has been held that tin shed standing on land used as dwelling house, the notification need not to mention separately as to acquisition of such structure. The words "permanently fastened to anything attached to the earth" used in Section 3-A have got a wide import which includes soil, building, any charges on the land or other interests in it including superstructure, and, therefore, it is not the requirement of the law to mention separately the structure, if any, in the notification as the purpose of



acquisition is to acquire the land but not superstructure standing on it. It has further been observed that land can be acquired along with the dwelling house standing on it in terms of Section 3-A. However, the Court has to take judicial note of it that if occupants of the dwelling house are thrown out on the streets after acquiring their land and house, it will be impossible for them to have an alternative accommodation at a reasonable rent in these days. May be occupants are landlords or tenants of the house. Therefore, in such cases making alternative suitable accommodation available to the occupants, is a must being in conformity with the principles of social justice.

26. In the cited case of Ekta Welfare Society vs. Govt. of India and others, reported in 2003 U.D. 405, the Division Bench of this Court has observed that the act of dispensing with enquiry u/s 5-A of the Act must be based on some real and genuine subjective satisfaction based on the relevant data/material available with the State Authorities at the time they issue the notification u/s 4(1) of the Act, by resorting of Section 17(4) of the Act. It has further been observed that in acquisition proceedings steps taken by State Authorities u/s 17(4) of the Act, dispensing with enquiry u/s 5-A of the Act, the citizens were deprived of agricultural land and their livelihood, the court has to strike a balance in such matters between the larger welfare of the people of the State vis-?-vis individual proprietary interest. The Division Bench has held that acquisition of land for setting up of interstate bus terminus is a very important aspect for economic growth of the State and merely because the interstate bus terminus will be managed by private sector, it still forms part of public purpose under the Land Acquisition Act. It has also been observed that there is nothing under the Land Acquisition Act which prevents the State from taking its own policy decision in the matter of acquisition of land and nothing prevents the State from changing the user of the land from agriculture to construction of buildings for Govt. Offices, Schools, etc.

27. In the next cited case of State of U.P. and another versus Keshav Prasad Singh, reported in 1995 A.W.C. 1783, the Hon''ble Supreme Court has held that in the facts and circumstances of the case the Government was justified in exercising their power u/s 17(4) invoking urgency clause and dispensing with the inquiry u/s 5-A. The facts of above cited case are that admittedly the land was acquired in the year 1963 for building of P.W.D. office and after construction, compound wall was also constructed to protect the building. As found by the civil court on adducing evidence in a suit that the department had encroached into respondent's land which was directed to be demolished and delivery of possession to be given. The public purpose was obvious as the compound was required to be retained to protect the safety of the office and there was thus urgency.

28. In the another cited case of Smt. Kailashwati Vs. State of U.P. and Another, , it has also been held that the question of the existence and the extent of urgency is a matter for subjective satisfaction of the Government and it is not open to the

courts to examine the propriety or correctness of the satisfaction by scrutinizing the same as court sitting in appeal over it. The court's power of interference is confined to the grounds of non-existence of facts or non-application of mind or on the ground of mala fide.

29. In the next cited case of First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, , it has been held that in the case of urgency decision of Government to dispense with enquiry u/s 5-A by invoking the urgency provision can be challenged only on grounds of non-application of mind and mala fide and burden lies on the person alleging mala fides to prove the same on the basis of specific materials, and mere allegation is not enough. In the instant case the petitioner has failed to prove the malafide intention as the State has acquired the property in question for public purpose and the intention of the Govt. for doing so was bonafide.

30. The State/respondent also relied upon the case of Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, , wherein in para-77, it has been observed by Hon"ble Apex Court that 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, the State can invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons. It was also observed that 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 u/s 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired. This principle of law applies to the facts of the case in hand. The property in question was already in possession of State Government and Government Offices were functioning on it and when the matter went before the High Court on the direction of High Court the urgency clause was invoked within the time granted by the High Court and there was satisfaction of the Government that time of few weeks or months likely to be taken in conducting inquiry U/S 5-A will, in all probability, frustrate the public purpose for which the property was proposed to be acquired, resulting eviction of public offices functioning in the property in question. The State/respondent also relied upon the case of Daulat Singh Surana and others vs. First Land Acquisition Collector and others, reported in (2007) 1 SCC 641, wherein the Hon"be Apex Court has observed that power of eminent domain can be exercised by the State only in public interest and it is for the Government to decide what is the public purpose. The power of compulsory acquisition as described by the term "eminent domain" can be exercised only in the interest and for the welfare of the people. The concept of public purpose should include the matters, such as, safety, security, health, welfare and prosperity of the community or public at

large. Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Public purpose is not static. It also changes with the passage of time, needs and requirements of the community. Broadly speaking, public purpose means the general interest of the community as opposed to the interest of an individual. In the instant case the property in question has been acquired for the establishment of government offices on the creation of new State and certainly it can be said that the acquisition was made in the general interest of the people of the State.

31. In the background of the above-cited cases, now coming to the facts of the case at hand, it is pertinent to mention here that the property in question was already in the use of State Government since May 2001 and this fact is not disputed to the parties. It is also case of the respondents that the property in question was previously requisitioned u/s 3 of U.P. Accommodation Requisition Act, 1947. Thus, old possession of State on the disputed property is fully proved. State offices were functioning on the building in question. After creation of State of Uttarakhand, Dehradun was declared provisional capital of the State and the property in question has been acquired for the use of offices under the Finance Department and the offices are functioning in the building in question. The contention of petitioner is that the petitioner wanted to open and run an educational institution and opening of an office cannot be termed to be public interest as against the opening and running of an educational institution. On the other hand the case of the State is that there are many educational institutions at Dehradun and there is acute shortage of accommodation to accommodate the government offices after creation of State of Uttarakhand and there was real urgency to acquire the disputed land. In my opinion the impugned acquisition of disputed property has been made in public interest. It is true that the petitioner has educational institutions at Delhi and some other places and wanted to open a new technical institute at Dehradun and correspondence in this regard was going on between the petitioner and All India Council for Technical Education as is apparent from Annexure 1 and 2 to the writ petition, but opening of public offices after creation of new State has greater importance and beneficial to public at large. Thus the State Government has acquired the property for functioning of various offices under the control of Finance Department. It is held that the acquisition has been made in public interest.

32. Now it is to be seen whether there was urgency to invoke provision of Section 17(4) of the Act dispensing with the enquiry u/s 5-A of the Act or the urgency clause has been invoked on the ground of non-existence of facts or non-application of mind or on the mala fide.

33. Learned counsel for the petitioner has submitted that the property in question was already in possession of the respondents, hence there was no real and genuine urgency to invoke the provision of Section 17(4) of the Act dispensing with the enquiry U/S 5-A of the Act and the notification is bad in law.

Reliance has been placed on a judgment of Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, .

34. In the above mentioned case the property in question was notified along with 14 other properties for acquisition on 6-3-1987 under the provisions of Section 4 and Sections 17(1) and (4) of the Act. Earlier these properties were requisitioned under the Defence of India Rules. The provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 were to lapse on 10-3-1987. Some of the owners of the property questioned the validity of acquisition proceedings by filing writ petition and the writ petitions were allowed and the acquisition proceeding on the basis of notification dated 6.3.1987 were quashed and the matters attained finality having reached the Apex Court. The facts of the cited case are not applicable to the case at hand. The property in dispute was already in possession of State and public offices were functioning therein and when the petitioner filed writ petition before the High Court then on the direction of High Court the urgency clause was invoked within a short period of ten days granted by High Court, otherwise the purpose of acquisition was to frustrate.

35. In my opinion, in the instant case, it cannot be said that the respondents had failed to take timely action for acquisition of the disputed property. The State had taken possession of disputed building in the year 2001, and it was earlier requisitioned under the provision of U.P. Accommodation Requisition Act 1947. The petitioner challenged the requisition before the High Court by filing W.P. No. 165 2002 and it is thus quite clear that there was threat on behalf of petitioner pertaining to possession of State Offices in the property in question. Further, this court vide order dated 6-5-2003 passed in above writ petition No. 165 of 2002 directed the respondents either to hand over the possession to the petitioner within ten days or to acquire the same under the Land Acquisition Act. In the above circumstances the State issued notification U/S 4 of the Act invoking provision of Section 17(4) dispensing with enquiry U/S 5-A of the Act. Hence it cannot be said that there was no real and genuine urgency to invoke urgency clause U/S 17(4) of the Act. In case the property in question would not have been acquired the state was obliged to hand over its possession to the petitioner as per direction of the High Court given in W.P. No. 165 of 2002. There was no direction of the Court in the Krishan Lal Case (Supra).

36. Here it would not be out of place to mention that learned Additional Advocate General on behalf of State has made a statement that after acquiring the property in dispute the State has spent a sum of Rs. 1,51,79,000/- for construction of office buildings of Director, Treasury and Finance Services; a further sum of Rs. 53,35,000/- for the construction of offices of Director, Account & Entitlement; and a sum of Rs. 4,23,63,000/-/- for Commercial Tax Department. The learned Advocate General drew attention of the court to the judgment of Anand Singh and another versus State of Uttar Pradesh and others, reported in (2010) 11 Supreme Court Cases 242. In para 56 it has been held as under:-

56. In the written submissions the GDA, it is stated that subsequent to the

declaration made u/s 6 of the Act in the month of December 2004, award has been made and out of the 400 landowners more than 370 have already received compensation. It is also stated that out of the total cost of Rs. 8,85,14,000/- for development of the acquired land, an amount of Rs. 5,28,00,000/- has already been spent by the GDA and more than 60% of work has been completed. It, thus, seems that barring the appellants and few others all other tenure-holders/landowners have accepted the "takings" of their land. It is too late in the day to undo what has already been done. We are of the opinion, therefore, that in the peculiar facts and circumstances of the case, the appellants are not entitled to any relief although dispensation of enquiry u/s 5-A was not justified.

37. The facts of the case at hand are almost identical to the facts of above cited case, that award has been made and State has spent an amount of more than six crores rupees on the construction of Government offices and, therefore, the petitioner is not entitled to get any relief if it is to be taken to be true for a moment that the dispensation of inquiry u/s 5-A was not justified.

38. It is also pertinent to mention here that the question of the existence and the extent of urgency is a matter for subjective satisfaction of the Government and it is not open to the courts to examine the propriety or correctness of the satisfaction by scrutinizing the same as court sitting in appeal over it. The courts' power of interference is confined to the grounds of non-existence of facts or non-application of mind or on the ground of mala fide and in the instant case there exist no case of non-existence of facts or non-application of mind or mala fide intention.

39. In the instant case on behalf of the petitioner it has been contended that the acquisition has been made on the dictate of Director Koshagar Evam Vitta Sevayen Uttaranchal as is evident from letter dated 8-5-2003 sent to Collector Dehradun. Perusal of letter dated 8-5-2003 Annexure C-A-1 shows that the Director had requested the Collector to acquire the property in question looking to the real and genuine urgency of building for the purposes of public offices under his control and the request of the Director cannot be said to be a dictate to the Collector as the Collector is the acquiring authority in the District on behalf of the State. The building in question was in dilapidated condition and when the State Government took possession of the property it was in vacant state and no judicial note is required to be taken in the present case as there was no question of having any inconvenience to the owner of the property as the State had taken its possession in vacant and dilapidated condition. It is reiterated that the State of Uttarakhand is newly formed State and when urgency was felt in the above mentioned circumstances the State had acquired the land on the direction of the High Court as well as on the threat being there from the side of petitioner. In this way it cannot be said that the opinion was based on no facts, rather it is quite clear that the decision of invoking urgency clause and dispensing with enquiry U/ S 5-A was taken on proper material and in an objective manner. The urgency was felt to open offices for the newly formed State on the disputed property, hence it

cannot be stated that the opinion was based on no facts not relevant or was based on facts at all. It is evident that there had been a proper application of the mind.

40. So far as the contention of learned counsel for the petitioner that the premises of the building in question could not have been acquired as the legislative intent is clear as evident from the words used in proviso of land in Section 3(f) (i) to (vii) and not in section 3 (f) (viii) of the Act, wherein the legislature used the word "premises" or "building", therefore, it confined only to "premises" or "building", cannot be accepted for the simple reason that the said provision of Section 3(f) cannot be read in isolation but will be read along with Section 3 (a) of the Act, which defines "land" and "land" includes "benefits to arise out of land, and things attached to earth or permanently fastened to anything attached to earth". As has been held in the case of Kashi Nath and others versus State of U.P. and others reported in 1993 A.L.J. 154, the land can be acquired along with dwelling house standing on it in terms of Section 3(a) and the "word" "permanently fastened to anything attached to the earth" has been interpreted.

41. For the reasons recorded above, as well as on the basis of law laid down as discussed in the foregoing paragraphs, it is thus quite clear that the State had acquired the disputed property in the interest of public at large and there was real and substantive urgency warranting invocation of urgency clause and dispensing with enquiry u/s 5-A of the Land Acquisition Act.

42. Since this Court in writ petition No. 165 of 2002 had directed to be State to hand over the possession of property in dispute in ten days, or acquire the same, therefore, the urgency was invoked in view of the fact if the land was not acquired within 10 days the State would be liable to be evicted from the possession of property and the contention of petitioner that the State was in possession, therefore, no need to invoke urgency clause to dispense with enquiry, cannot be accepted.

43. The petitioner has failed to establish that there was non-existence of facts or no-application of mind and the acquisition has been made on the ground of mala fide. Thus the cases cited on behalf of petitioner have no application to the facts of the case at hand and the petitioner is not entitled to get any relief claimed in the writ petition, in the peculiar facts and circumstances of the case. In the result, the writ petition lacks merit and is liable to be dismissed.