

(2012) 12 MAD CK 0044
In the Madras High Court
Case No : Writ Petition No. 28156 of 2011

M. Madhan Mohan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Constitution of India, 1950 — Article 300A

Land Acquisition Act, 1894 — Section 11, 17, 17(1), 17(2), 17(4)

Citation : (2013) 1 MLJ 616

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : D. Baskar, for the Appellant; A. Srijayanthi, for R1 to R4 and Mr. Jayesh B. Dolia, Special Government Pleader for R5, for the Respondent

Judgement

Mr. Justice V. Dhanapalan

1. Heard Mr. D. Baskar, learned counsel for the petitioner, Mrs. A. Srijayanthi, learned Special Government Pleader appearing for respondents 1 to 4 and Mr. Jayesh B. Dolia, learned counsel appearing for the 5th respondent. This Writ Petition is filed seeking to quash the impugned notification of the 1st respondent issued u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "Act") in G.O.Ms. No. 68, Energy (C1) Department dated 30.08.2011 and Section 6 Declaration in G.O.Ms. No. 76 Energy (C1) Department, dated 16.09.2011 and to forbear the respondents herein from in any manner proceeding with acquisition of the lands of the petitioner comprised in Survey No. 116/1, 116/2, 117/13, 118/8, 118/9, 118/10, 119/7B, 119/9, 120/3A, 127/2, 128/1A, 128/1B, 128/2, 129/1, 130/2, 130/3, 130/4, 131/1, 131/2, 131/4, 132/1, 132/2, 132/3, 133/1, 133/2, 133/3, 133/5, 137/3, 138/6, 138/7A, 138/8A, 138/10A, 139/1, 139/4, 139/5A, 139/6A, 143/1A, 144/1, 144/2, 144/3, 145/1, 145/2, 146/1, 146/2, 147/1, 147/2, 147/3, 147/4, 148/1, 148/2, 148/3, 148/4, 148/5, 148/6, 148/7, 148/8, 148/9, 148/10, 148/11A, 148/12A, 149/1, 149/2, 149/3, 149/4, 149/5 measuring an extent of 43.16.0 Hectares in Somanahalli Village and

Survey Nos. 54/4A2, 54/3F2B, 56/4D, 56/4E, 56/4F, 56/4G of an extent of 4.02.5 Hectares in Pangunatham Village, Dharmapuri Taluk and District.

2. According to the petitioner, he is an Agriculturist, owning Agricultural lands in Somanahalli Village comprised in the above Survey Numbers and lands in Pangunatham Village comprised in Survey Nos. 54/4A2, 54/3F2B, 56/4D, 56/4E, 56/4F, 56/4G in Somanahalli Village, Dharmapuri Taluk and District, measuring a total extent of about 80 acres. He claims to have purchased the same out of his hard agriculture labour under various Sale Deeds for a valuable consideration and mutation of his name in the Revenue Records has also been made. Consequently, Patta has also been given in his favour.

3. On 19.04.2011, the Revenue Officials of Dharmapuri Taluk and the 5th respondent along with 200 Policemen came to the petitioner's lands and informed him that he should vacate the said lands, as they are required for the establishment of the 5th respondent Company. As the respondents have not followed the procedures contemplated under the law, the petitioner approached this Court by way of a Writ Petition in W.P.No. 10951 of 2011 for the issuance of a writ of mandamus directing the respondents 1 to 3 therein not to evict him without following the due process of law. On 21.06.2011, this Court, after recording the submissions of the Government and the 5th respondent, disposed of the said Writ Petition in the following terms:

11. In the above circumstances, it is explicitly clear that the only apprehension made by the petitioner is that he may be evicted without following due process of law. Now, as the respondents have vividly stated that only after following the procedures contemplated under the Land Acquisition Act, acquisition proceedings will be taken up by the Government authorities, the apprehension of the petitioner is dispelled. The specific averment made by the 8th respondent in the counter affidavit is recorded and it is made clear that if any proceedings are initiated, it is obligatory on the part of the respondents to proceed only in accordance with law after following the provisions contemplated under the Land Acquisition Act.

The Writ Petition is disposed of with the above observation. No costs. Consequently, connected M.P. Nos. 1 to 3 of 2011 are closed.

4. The petitioner would further submit that pursuant to the said order, the 1st respondent has initiated process for acquisition of his lands and the lands of other adjoining land owners. On 30.08.2011, the 1st respondent approved the draft notification and accordingly, the impugned notice u/s 4(1) of the Act in G.O.Ms. No. 68, Energy Department dated 30.08.2011 was published in Makkal Kural on 30.09.2011. The 1st respondent has mentioned in the impugned notification that the lands are required for public purpose for establishing 765/400 KW Sub-Station and hence, the provision u/s 17(2) of the Act is invoked. Also, it has been notified that in view of the aforesaid urgency, provision u/s 5-A is not applicable. Thereafter, the 1st respondent has straightaway issued

Declaration u/s 6 of the said Act in G.O.Ms. No. 76, Energy (C1) Department, dated 16.09.2011 and published in Dhina Thanthi, dated 18.09.2011. According to the petitioner, no notice u/s 5(A) of the Act was served on him and no opportunity was given to him before issuing notification u/s 6 of the Act, which is mandatory as per various judgments of the Supreme Court.

5. It is also submitted by the petitioner that the respondents, in fact, have initially decided to acquire the lands in some other Villages, viz., Adhagapadi Village and inspected the lands in the year 2009 itself with the help of Police. But, the said attempt was thwarted and dropped by the respondents herein, as the people of the said Village heavily protested and held demonstrations and agitations against the said proposed acquisition. Thereafter, after a lapse of two years, the respondents have now initiated proceedings to acquire his lands through the impugned Notification u/s 4(1) and Section 6 Declaration, which itself clearly show that there is no real urgency involved in the matter. However, the respondents, with ulterior motive and in order to favour the 5th respondent Company, for the reasons best known to them, have initiated proceedings by violating Section 17(2), as if enquiry is there, which is not but, arbitrary and colourable exercise of powers. Though, in exercise of the power of eminent domain, the Government can acquire a private property for public purpose, the respondents failed to see that deprivation of the only source of livelihood of individuals cannot be made. Hence, having left with no other alternative, the petitioner has once again approached this Court with the present Writ Petition.

6. The District Collector, Dharmapuri District, the 3rd respondent herein has filed counter affidavit and has stated as follows:

(i) To improve the power distribution, the Power Grid Corporation of India Ltd., who is the 5th respondent, made a requisition to the 3rd respondent herein for acquisition of land at Adhagapadi Village near Dharmapuri for establishment of Sub-Station. Pursuant thereto, on 13.12.2010, the 3rd respondent sent a proposal for administrative sanction to CLA/Chennai for acquiring lands at Adhagapadi Village invoking emergency clause u/s 17(1) of the Act. On 24.03.2011, the 5th respondent deposited a sum of Rs. 1 crore in favour of the Land Acquisition Officer and Sub-Collector, Dharmapuri towards advance payment of land acquisition cost and it was duly acknowledged by the Sub-Collector, Dharmapuri on the very same day. By G.O.Ms. No. 25, Power Department, dated 25.03.2011, the Government of Tamil Nadu accorded administrative sanction for acquiring lands measuring an extent of 122.91 acres at Adhagapadi Village for establishment of 765/400 K.V. Sub-Station invoking Section 17(2) of the Act.

(ii) For the purpose of preparing draft proposals u/s 4 and 6 of the Act, the Tahsildar, Dharmapuri visited Adhagapadi Village on 28.03.2011 for inspection. But, she was prevented from entering upon the lands for carrying out the inspection by the farmers and owners of the lands stating that the lands were fertile dry lands and their major livelihood would be affected, if it were acquired.

They also requested and insisted the District authorities that there is availability of barren lands which is unsuitable for agriculture and will not cause damage to anybody, if acquired. The general public numbering around 400 engaged in "road roko" and blocked the traffic and they also threatened to boycott the General Assembly elections. In such circumstances, on 06.04.2011, the 3rd respondent herein addressed a letter to the 5th respondent narrating the incidents which took place on 28.03.2011, in which the Tahsildar, Dharmapuri was prevented by the public and the land owners from inspecting the lands. In the said letter, it was further stated that with a view to avoid law and order problem and also to protect the interests of small and marginal farmers for acquisition of the lands at Adhagapadi Village, the 4th respondent has been advised to select alternate lands that is not suitable for agricultural purpose. Therefore, the lands situated at Pankunatham and Somanahalli Villages, which are dry and barren and not suitable either for agricultural activities or for house sites, were selected for the establishment of a Sub-Station. The 3rd respondent called upon the 5th respondent to examine the technical feasibility for construction of sub-station in the above said Villages.

(iii) On 20.04.2011, the Site Selection Committee of the 5th respondent Corporation inspected the lands at Pankunatham and Somanahalli Villages for studying the technical feasibilities for construction of the Sub-Station. By a letter dated 21.04.2011, the 5th respondent Corporation informed the 3rd respondent that it had inspected the alternate lands at Somanahalli and Pankunatham Villages and that the same is found suitable for establishing the 765/400 KV Sub-Station based on techno economic considerations including transmission lines take off both present and future requirements. In the said letter, it was further stated that the requirement of land is about 107 acres. Along with the letter, the 5th respondent enclosed the revenue map indicating the requirement of area along with tentative general arrangement of switch yard drawing. The 5th respondent requested the 3rd respondent to hand over immediate possession of the land invoking urgency clause u/s 17(1) of the Act, as the Sub-Station was scheduled to be commissioned in March 2013. On 28.04.2011, the 5th respondent addressed a letter to the 3rd respondent enclosing the Land Plan Schedule (LPS) for the proposed land to be acquired at Somanahalli and Pankunatham Villages. On 05.05.2011, the 3rd respondent has sent the proposal to the Commissioner of Land Administration for administrative sanction. But, prior to the same, the petitioner had approached this Court in W.P.No. 10951 of 2011 and obtained interim injunction on 27.04.2011 restraining the respondents herein from dispossessing him from his patta land except in accordance with law. This Court, by an order dated 21.06.2011, disposed of the Writ petition with an observation that if any proceedings are initiated, it is obligatory on the part of the respondents to proceed only in accordance with law after following the provisions contemplated under the Act.

(iv) The Government approved the Notification u/s 4(1) of the Act in G.O.Ms. No. 68, Energy (C1) Department, dated 30.08.2011 for acquisition of lands at

Somanahalli and Pangunatham Villages to an extent of 43.16.0 hectares for a public purpose for establishment of 765/400 KV Power Grid Sub-Station. The 4(1) Notification was published in the Tamil Nadu Government Gazette Extraordinary issue dated 30.08.2011 and published in the local Tamil Newspapers "Namadu MGR" and "Makkal Kural" on 03.09.2011. It has been clearly stated in the 4(1) notification as: "under sub-section 4 of Section 17 of the Act, Government of Tamil Nadu directs in view of the urgency of the case the provisions of the Section 5A of the Act shall not apply to the case.

(v) Following the same, the Government approved the Declaration u/s 6 of the Act in G.O.Ms. No. 76 Energy (C1) Department dated 16.09.2011 and Declaration u/s 6 of the Act was published in the Tamil Nadu Government Gazette, dated 16.09.2011 and published in the local Tamil Newspapers, viz., Dina Malar and Dhina Thanthi on 18.09.2011. Aggrieved by the above said proceedings, the present Writ petition has been filed before this Court.

(vi) With regard to the averment contained in paragraph 6 of the affidavit, it is stated that the Government invoked urgency Clause u/s 17(2) of the Act, enquiry u/s 5-A of the Act shall not apply to the case, which was mentioned in the 4(1) Notification published in the Tamil Nadu Government Gazette dated 30.08.2011. Hence the question of issuance of notice u/s 5(A) does not arise. With regard to the averment of the petitioner that the respondents have initiated acquisition proceedings after a lapse of two years, the 3rd respondent has stated that on 20.07.2010, the 5th respondent made a request to the 3rd respondent to acquire lands at Adhagapadi Village near Dharmapuri for establishment of Sub-Station by invoking urgency clause, pursuant to which, administrative sanction was accorded. But, on account of the agitation by small and marginal farmers of Adhagapadi Village, alternative proposal was given by the 3rd respondent on 06.04.2011. The said lands were found suitable by the 5th respondent and the same was duly intimated to the 3rd respondent on 21.04.2011. Inasmuch as the 3rd respondent made its first request for acquiring the lands for the purpose of establishing a sub-station on 20.07.2010 only, the averment that the acquisition proceedings were initiated after a period of 2 years is wholly incorrect, misleading and misconceived.

7. The 3rd respondent has filed additional counter affidavit on 19.12.2011, wherein, it is stated as follows :

(i) The market value of the dry lands situated at Pangunatham and Somanahalli Villages is Rs. 80,189/- per acre and Rs. 1,98,167/- per Hectare respectively and as per the guideline register, the value of the land is Rs. 43,286/-per acre and Rs. 1,07,300/- per hectare, respectively. 90% of the lands are barren lands and in the remaining land, rain fed crops are being grown. Two wells are located for irrigation purpose. Since the lands are barren, there is no scope for increase in the value of the land in the near future. The value of the lands situated adjoining the Village points at either side of the Dharmapuri-Hognekkal Highway Road alone are little more when compared to the lands proposed for acquisition. Since

the subject lands are located 400 meters away from the main road and since they are located in an uncultivable area, their value will not increase in the future. Even, if the sub-station is established, there is no scope for enhancement of value of the land.

(ii) The petitioner is carrying out speculative real estate business and he is not engaged in any agricultural activities. The petitioner has purchased the lands proposed for acquisition at a cheaper rate. Apart from the subject land admeasuring an extent of 30 acres proposed for acquisition, the petitioner also owns an extent of 50 acres in and around. The petitioner is not a farmer, but he is a businessman with diversified business activities. He has not purchased the subject lands for agricultural purposes, but, he has purchased the same with commercial speculative intention. The lands are located 400 meters away from Dharmapuri-Hognekkal Highway. The approach road alone connects the subject land with the Highway. On enquiry, it is learnt that the land proposed for acquisition is a barren and dry land and has not been under cultivation for a long time. The reason for the same is that they are not suited for agriculture. There are small stones on the top of the soil in the subject lands. The soil is very poor with hardened crest and the lands are only suitable for establishment of industries like erection of power transformers.

8. In the additional counter affidavit dated 05.01.2012, the 3rd respondent has stated as follows:

(i) Out of the lands owned by the petitioner, an extent of 30.12 acres proposed to be acquired has been purchased by the petitioner at a cost ranging from Rs. 30,000/- to Rs. 85,714/- per acre. The average value per acre works out to about Rs. 61,082/-. However, the District Administration had recommended a sum of Rs. 80,189/- per acre for fixing the land cost, which is more than the average sale price of the lands purchased by the petitioner.

(ii) The compensation amount towards Land Acquisition works out to Rs. 1,30,41,064/- (including Lands, Structures and Trees). 80% of the above compensation amounts to Rs. 1,04,32,851/- has been deposited to the Land Acquisition Officer and Sub-Collector, Dharmapuri on 24.03.2011 and 16.12.2011. Based on the Court order in M.P. No. 1 of 2011, dated 20.12.2011, necessary steps were taken to calculate the compensation for standing crops. The total amount for standing crops works out to Rs. 3,42,134/- and 80% of the said amount, i.e. Rs. 2,73,707/- shall be deposited on or before 11.01.2012.

9. The 4th respondent has filed counter affidavit, wherein, he has stated that the Land Acquisition proceedings has been initiated for the purpose of establishment of 765/400 KV Sub-Station which is for a public purpose. Taking into consideration of the fact that the Government and the public at large will be benefited by the project which is for a public purpose, the Government invoked urgency clause u/s 17(2) of the Act and accorded administrative sanction and thereby dispensed with 5A enquiry. The urgency clause was invoked taking into

consideration the power crises faced by the State in the present scenario. In the present case, the 4(1) Notification and 6 Declaration and also the passing of the award was completed within a year and the urgency clause by dispensing 5(A) enquiry has been satisfactorily complied.

10. The 5th respondent, Power Grid Corporation of India has filed counter affidavit, wherein, it is stated as follows:

(i) The Power Grid Corporation of India Ltd. is a Government of India Enterprise & Central Transmission Utility under the aegis of Ministry of Power and it is a Corporation of national importance incorporated as a "Government Company" under the provisions of Companies Act, 1956, by Government of India, with a view to develop an efficient Power Transmission System network throughout the country and to establish the National Power Grid in the country.

(ii) Private power producers, M/s. Coastal Energen and M/s. IndBharath (Madras) Limited are establishing their power generating stations near Tuticorin. For evacuation of power from the above power projects, establishments of 765/400 KV pooling station at Tuticorin, Salem and Madhugiri under the Transmission System associated with Long Term Open Access (LTOA) was decided in the 28th meeting of the Standing Committee on power system planning held on 15.06.2009. The decision in the meeting held on 15.06.2009 was approved in the 11th meeting of the Southern Regional Power Committee, Ministry of Power, Government of India, held on 17.09.2009. The above pooling station will facilitate in meeting the power demand of southern States and Tamil Nadu in particular and the overall growth of the State. Further, the bulk power transfer from other States and from other Regions is essential while facing shortage of power and also in the even of any natural disaster like cyclone, flood, etc.

(iii) With the avowed object of establishing 765/400 KV pooling station at Tuticorin, Salem and Madhugiri, by a letter dated 20.07.2010, the 5th respondent made a requisition to the 3rd respondent herein for acquisition of land at Adhagapadi Village near Dharmapuri for establishment of Sub-Station. Pursuant thereto, on 13.12.2010, the 3rd respondent sent a proposal for administrative sanction to CLA/Chennai for acquiring lands at Adhagapadi Village invoking emergency clause u/s 17(1) of the Act. On 24.03.2011, the 5th respondent deposited a sum of Rs. 1 crore by way of Demand Draft bearing No. 338573 drawn on State Bank of India, dated 23.03.2011 favouring the Land Acquisition Officer and Sub-Collector, Dharmapuri along with the letter dated 24.03.2011 towards advance payment of land acquisition cost and the same was duly acknowledged by the Sub-Collector, Dharmapuri on the very same day. The Government of Tamil Nadu, Power Department, in G.O.Ms. No. 25, dated 25.03.2011 accorded administrative sanction for acquiring lands measuring an extent of 122.91 acres at Adhagapadi Village for establishment of 765/400 K.V. Sub-Station invoking Section 17(2) of the Act.

11. Mr. D. Baskar, learned counsel for the petitioner, would strenuously contend

that Section 17(2) declaration has been made before the issuance of notice u/s 4, which is against the provisions of the Act. Highlighting the view taken in Radhy Shyam's case that the acquisition authorities must satisfy themselves that the time of few weeks or months likely to be taken in conducting enquiry u/s 5-A will frustrate the public purpose, he would further contend that there is no urgency as envisaged by the respondents to dispense with enquiry u/s 5-A of the Act.

12a. In support of his case, learned counsel for the petitioner has relied on the following:

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

77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good *Dwarkadas Shrinivas v. Sholapur Spg. and Wvg. Co. Ltd.*, *Charanjit Lal Chowdhury v. Union of India* and *Jilubhai Nanbhai Khachar v. State of Gujarat*.

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana*; *State of Maharashtra v. B.E. Billimoria and Dev Sharan v. State of U.P.*

(ii) *Union of India (UOI) and Others Vs. Mukesh Hans etc.*,

13. Mr P.P. Rao, learned Senior Counsel appearing for the appellants, contended that the principal public purpose for which the land was sought to be acquired is of great public importance to the people of Delhi. The festival "Phool Walon Ki Sair" being a festival in which both Hindus and Muslims take part, any step taken towards furthering this objective would only benefit the society. Hence, the public purpose for which the land was sought to be acquired was of great importance in the present-day context. He further submitted that Section 17 of the Act is a special provision which empowers the acquiring authorities when so directed by the appropriate Government to proceed to take possession of the land as contemplated in the said section. He pointed out that under sub-section (4) of Section 17, a further wider power is bestowed on the appropriate Government to even exclude an inquiry u/s 5-A of the Act and if so done, even a declaration u/s 6 of the Act becomes unnecessary and what is necessary was only a publication of Section 4(1) notification. According to the learned counsel a careful perusal of the provisions of Section 17 indicates that in case of urgency it is open to the

appropriate Government as in the instant case to exclude the inquiry u/s 5-A of the Act by invoking the power under sub-section (4) of Section 17. He contended that the urgency contemplated under sub-sections (1) and (2) of Section 17 by itself is sufficient for invoking Section 17(4) to exclude the inquiry and in the instant case the appellants themselves having given up their challenge as to the existence of the urgency u/s 17(1) they cannot contend that there was no urgency to invoke Section 17 of the Act, therefore the Lt. Governor rightly entertained the said urgency u/s 17(1) invoking Section 17(4) and to exclude Section 5-A inquiry. It is his contention that the High Court erroneously quashed the notification though partially. Mr Rao submitted that from the material on record it is clear that right from the time of initiation of acquisition proceedings there was application of mind in regard to the exclusion of inquiry u/s 5-A at every stage. The learned counsel also submitted that the degree or sufficiency of urgency is not a matter to be assessed by the High Court in a judicial scale. Hence, the High Court in the present case erred in making the impugned order. He placed strong reliance on the judgment of this Court in the case of State of U.P. v. Pista Devi, wherein this Court held thus: (SCC p. 252)

The provision for housing accommodation in these days has become a matter of national urgency and courts should take judicial notice of this fact. Having regard to the enormous growth of population in the country, the governmental schemes of development of residential areas, such as those of Development Authorities constituted by the State Governments for cities, now demand emergent action eliminating summary enquiry u/s 5-A of the Land Acquisition Act.

(iii) Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others,

31. The various decisions cited on behalf of the appellants in support of their submission that there was justification in invoking urgency clause for acquiring the properties in question were on the facts of those cases where either urgency was made out or where it was shown that relevant material and data was available at the time of issuing notification invoking urgency clause. In the case of Deepak Pahwa v. Lt. Governor of Delhi 4 one of the grounds raised was that a long period of 8 years was spent in interdepartmental correspondence which showed that there was no urgency to invoke Section 17(4) of the Act. In that context, the Court observed that: (SCC pp. 315-16, para 8)

Very often persons interested in the land proposed to be acquired make various representations to the authorities concerned against the proposed acquisition. This is bound to result in a multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition.

The Court proceeded on the assumption that the pre-notification delay could have been caused by representations made by the aggrieved parties but this case is not an authority to say that in the absence of material to justify urgency

clause and long delay in issuing the notification could be ignored or condoned to uphold the validity of such notification. In *Chameli Singh v. State of U.P.* 6 the observations of the Court that larger the delay, greater be the urgency was in the context of the facts of that case having regard to the public purpose involved therein for invoking the urgency clause. In that case, the Court appeared to think that very often the officials due to apathy in the implementation of the policies and programmes of the Government themselves adopt dilatory tactics which leads the aggrieved party to challenge the invocation of urgency. The Court took note of the fact that urgency clause was invoked in that case for providing house sites to the dalits and the poor which is a national problem. This is not an authority to condone or ignore the laxity or lethargy or carelessness on the part of the authorities in invoking urgency clause to exercise special powers u/s 17 of the Act to cover up their delay and laches without there being any justification or material justifying invoking of urgency clause. In the case of *Union of India v. Ghanshyam Dass Kedia*¹⁴ this Court has taken the view that the notification need not specifically recite the nature of urgency and it is enough if the records disclosed the consideration by the Government on the urgency for taking action under Sections 17 and (4) of the Act. This position was not disputed before the High Court and is also not contested before us. The view of the High Court in this regard that the notification itself must specifically state about the nature of urgency and in its absence the notification gets vitiated, cannot be accepted. But as already observed above, the High Court did not quash the notification only on the ground of non-mentioning of urgency in the impugned notification but it has also independently considered and concluded that no material was placed before the Court to show that material and circumstances were available before the authorities at the relevant time to invoke the urgency clause to exercise powers u/s 17 of the Act. "Urgency" for invoking of Section 17 of the Act should be one arising naturally out of circumstances, which exist when the decision to acquire the land is taken and not such, which is the result of serious lapse or gross delay on the part of the acquiring authority. However, the position may be different where the delay is caused or occasioned by the landowner himself. Failure to take timely action for acquisition by the authorities of the Union of India cannot be a ground to invoke the urgency clause to the serious detriment of the right of the landowner to raise objections to the acquisition u/s 5-A.

(iv) *Devender Kumar Tyagi and Others Vs. State of U.P. and Others*,

24. We have heard the learned counsel for the parties before us. The second point in issue before us is no more *res integra* as it has already been decided by this Court in *Radhy Shyam v. State of U.P.* 5, to which one of us was the party (G.S. Singhvi, J.), wherein this Court has considered the development of the jurisprudence and law, with respect to invoking of the urgency provisions u/s 17 vis-?-vis right of the landowner to file objections and opportunity of hearing and enquiry u/s 5-A, by reference to a plethora of earlier decisions of this Court. This Court had culled out the various principles governing the acquisition of the land for public purpose by invoking urgency thus: (SCC pp. 602-03, para 77)

77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good *Dwarkadas Shrinivas v. Sholapur Spg. & Wvg. Co. Ltd.* 6, *Charanjit Lal Chowdhury v. Union of India* and *Jilubhai Nanbhai Khachar v. State of Gujarat*⁸.

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana*⁹, *State of Maharashtra v. B.E. Billimoria*¹⁰ and *Dev Sharan v. State of U.P.* ¹¹

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

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the LA 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.

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

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power 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 that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their

mind to the relevant factors and the records.

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

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

25. In view of the above it is well settled that acquisition of land for public purpose by itself shall not justify the exercise of power of eliminating enquiry u/s 5-A in terms of Section 17(1) and Section 17(4) of the LA Act. The Court should take judicial notice of the fact that certain schemes or projects, such as the construction of the Leather City Project for public purpose, which contemplate the development of residential, commercial, industrial or institutional areas, by their intrinsic nature and character require the investment of time of a few years in their planning, execution and implementation. Therefore, the land acquisition for said public purpose does not justify the invoking of urgency provisions under the LA Act.

26. In *Radhy Shyam*⁵, this Court, whilst considering the conduct or attitude of the State Government vis-?-vis urgency for acquisition of the land for the public purpose of planned industrial development in District Gautam Budh Nagar, has observed: (SCC pp. 605-06, para 82)

82. In this case, the Development Authority sent the proposal sometime in 2006. The authorities up to the level of the Commissioner completed the exercise of survey and preparation of documents by the end of December 2006 but it took one year and almost three months for the State Government to issue notification u/s 4 read with Sections 17(1) and 17(4). If this much time was consumed between the receipt of proposal for the acquisition of land and issue of notification, it is not possible to accept the argument that four to five weeks within which the objections could be filed under sub-section (1) of Section 5-A and the time spent by the Collector in making enquiry under sub-section (2) of

Section 5-A would have defeated the object of the acquisition.

28. In the facts and circumstances of the present case, it is clear that this Court, vide its order dated 17-8-2004¹, has issued a direction to the respondents to relocate the bone mills and allied industries causing environment pollution and health hazards as per the recommendations of CPCB and, inter alia, the respondents were also directed to identify the area for relocation. Pursuant to this, the respondents have filed an affidavit in the month of December 2004 specifying the construction of the Leather City Project at Hapur in Ghaziabad. Subsequently, it was only after the lapse of two years, the State Government had issued a Notification u/s 4 on 3-7-2006 and the same was published on 4-7-2006. Thereafter, the State Government took more than 17 months in order to make a declaration of the notification u/s 6 from the date of publication of the notification u/s 4 of the LA Act. In view of the above circumstances, it is crystal clear that the government functionary has proceeded at very slow pace at two levels, that is, prior to the issuance of the notification u/s 4 and post the issuance of the notification u/s 4, for acquisition of the land for construction of the Leather City Project, which undoubtedly is a public purpose. Therefore, the above series of the events amply exhibit the lethargical and lackadaisical attitude of the State Government. In the light of the above circumstances, the respondents are not justified in invoking the urgency provisions u/s 17 of the LA Act, thereby, depriving the appellants of their valuable right to raise objections and opportunity of hearing before the authorities in order to persuade them that their property may not be acquired.

30. The directions or orders issued by this Court must be abided by within the four corners of the legal framework and statutory provisions. The State Government is not allowed to transgress the express legal provisions and procedure thereunder in the garb or guise of implementing our guidelines or directions. The directions of this Court are issued with a purpose and the said purpose is supposed to be followed in the realm of legal structure and principles. Therefore, the respondents are not justified in invoking the urgency provisions of the LA Act in an arbitrary manner by referring to our earlier directions as a defence for their illegal and arbitrary act of acquiring land without giving an opportunity of raising objections and hearing to the petitioners in terms of Section 5-A of the LA Act.

(v Darshan Lal Nagpal (dead) by L.Rs. Vs. Government of NCT of Delhi and Others,

36. It needs no emphasis that majority of the projects undertaken by the State and its agencies/instrumentalities, the implementation of which requires public money, are meant to benefit the people at large or substantially a large segment of the society. If what the High Court has observed is treated as a correct statement of law, then in all such cases the acquiring authority will be justified in invoking Section 17 of the Act and dispense with the inquiry contemplated u/s 5-A, which would necessarily result in depriving the owner of his property without

any opportunity to raise legitimate objection. However, as has been repeatedly held by this Court, the invoking of the urgency provisions can be justified only if there exists real emergency which cannot brook delay of even few weeks or months. In other words, the urgency provisions can be invoked only if even small delay of few weeks or months may frustrate the public purpose for which the land is sought to be acquired. Nobody can contest that the purpose for which the appellants land and land belonging to others was sought to be acquired was a public purpose but it is one thing to say that the State and its instrumentality wants to execute a project of public importance without loss of time and it is an altogether different thing to say that for execution of such project, private individuals should be deprived of their property without even being heard.

12. On the other hand, Mrs. A. Srijevanthi, learned Special Government Pleader appearing for respondents 1 to 4, would submit that the Government invoked urgency clause u/s 17(2) of the Act and accorded administrative sanction and thereby dispensed with 5A enquiry, taking note of the power crisis faced by the State in the present scenario. Therefore, there is no requirement for issuing order u/s 17(4) of the Act indicating dispensation of enquiry u/s 5-A of the Act.

13. Mr. Jayesh B. Dolia, learned counsel appearing for the 5th respondent, would contend that since the lands are acquired invoking urgency clause, enquiry u/s 5-A is automatically dispensed with.

14. In support of their case, both the learned Special Government Pleader appearing for respondents 1 to 4 and the learned counsel appearing for the 5th respondent have relied on the following decisions :

(i) Union of India and others Vs. Praveen Gupta and others,

9. It is now settled legal position that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. Therefore, there was no need to pass any reasoned order to reach the conclusion that there is urgency so as to dispense with the enquiry u/s 5-A in exercise of power u/s 17(4). It is then contended by Shri Sanghi that as per the revised Master Plan, only 37 hectares of land was needed for establishment of timber depots, though extensive land was sought to be acquired. When that objection was taken, we passed the order directing the competent officer to file an affidavit. By our proceedings dated 24-8-1995, it was observed as under:

In view of the specific averments made in the written submissions of the respondents regarding the location of the timber depots in terms of the master plan, it requires clarification by the Delhi Administration whether the lands in Siraspur and Libaspur are still required for the purpose mentioned in the notification, namely, planned development of Delhi and shifting of the timber depots from the Teliwara area into the new places.

(ii) Union of India (UOI) and Others Vs. Mukesh Hans etc.,

32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It also indicates that mere existence of an urgency u/s 17 or unforeseen emergency u/s 17(2) would not by itself be sufficient for dispensing with Section 5-A inquiry. If that was not the intention of the legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with. But then that is not the language of the section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5-A inquiry does not mean that in each and every case when there is an urgency contemplated u/s 17(1) and unforeseen emergency contemplated u/s 17(2) exists that by itself would not contain the need for dispensing with Section 5-A inquiry. It is possible in a given case the urgency noticed by the appropriate Government u/s 17 or the unforeseen emergency u/s 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry u/s 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17(1) and (2) of the Act.

(iii)V Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others,

16. Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down u/s 5-A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry u/s 5-A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause u/s 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry u/s 5-A of the Act could be completed. In other

words, if power u/s 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration.

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

22. In cases where the acquisition is made by invoking Section 4 read with Sections 17 and/or 17(4), the High Court should insist upon filing of reply-affidavit by the respondents and production of the relevant records and carefully scrutinise the same before pronouncing upon the legality of the impugned notification/action because a negative result without examining the relevant records to find out whether the competent authority had formed a bona fide opinion on the issue of invoking the urgency provision and excluding the application of Section 5-A is likely to make the landowner a landless poor and force him to migrate to the nearby city only to live in a slum. A departure from this rule should be made only when land is required to meet really emergent situations like those enumerated in Section 17. If the acquisition is intended to benefit private person(s) and the provisions contained in Sections 17(1) and/or 17(4) are invoked, then scrutiny of the justification put forward by the State should be more rigorous in cases involving the challenge to the acquisition of land, the pleadings should be liberally construed and relief should not be denied to the petitioner by applying the technical rules of procedure embodied in the CPC and other procedural laws.

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

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power 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 that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records.

15. I have heard the learned counsel for the parties and perused the materials on record.

16. In order to develop an efficient Power Transmission System network throughout the country and to establish the National Power Grid, the Power Grid Corporation of India Limited, a Government of India Enterprise and Central Transmission Utility under the aegis of Ministry of Power was incorporated as a "Government Company". The Power Grid Corporation, the 5th respondent herein made a requisition to the 3rd respondent herein for acquisition of land at Adhagapadi Village near Dharmapuri for establishment of Sub-Station. Pursuant thereto, on 13.12.2010, the 3rd respondent sent a proposal for administrative sanction to the Commissioner of Land Administration, Chennai for acquiring lands at Adhagapadi Village invoking emergency clause u/s 17(1) of the Act. Accordingly, administrative sanction u/s 17 of the Act was accorded on 23.08.2011 by the Government of Tamil Nadu for acquiring lands measuring an extent of 106.65 acres, which is equal to 43.16.0 Hectares of Patta lands and 2.27.5 Hectares of poramboke lands at Somanahalli and Pangunatham Villages.

17. Thereafter, the Government issued an order vide G.O.Ms. No. 68, Energy (C1) Department, dated 30.08.2011 u/s 4(1) of the Act, for acquiring lands for the establishment of 765/400 K.V. Sub-Station by the Power Grid Corporation of India, which is for a public purpose. On the same day, i.e. on 30.08.2011, 4(1) Notification was published in the Tamil Nadu Government Gazette. The said notification was also published in "Namadhu MGR" and "Makkal Kural" on 03.09.2011 and 04.09.2011. Subsequent thereto, on 16.09.2011, Section 6 Declaration was made in the Tamil Nadu Government Gazette and publication of Section 6 Declaration in the Tamil Nadu Government Gazette was also made on the same day. On 18.09.2011, publication of Section 6 Declaration was effected in the local Tamil Newspapers, "Dinamalar" and "Dhinathanthi". Pursuant to that, on 29.11.2011, approval of land valuation was given by the Commissioner of Land Administration, Chennai. On 30.11.2011, Draft Declaration u/s 7 of the Act was approved by the District Collector.

18. Thereafter, on 16.12.2011, a sum of Rs. 4.32 Lakhs was deposited with the Land Acquisition Officer. On 29.12.2011, enquiry u/s 9(1) of the Act was conducted by the Land Acquisition Officer. On 11.01.2012, a sum of Rs. 2.73 lakhs was deposited towards crop compensation as directed by this Court vide order dated 23.12.2011 and on 13.01.2012, the respondents proceeded further to disburse 80% of the compensation to the land owners except the petitioner and another land owner. On 20.01.2012, the 5th respondent Corporation took physical possession of the lands. Again, on 16.03.2012, a sum of Rs. 56.14 Lakhs was deposited with the Land Acquisition Officer. In toto, a sum of Rs. 1.63

crores was deposited for acquisition of the entire extent of 106.65 acres of land.

19. For the purpose of preparing draft proposals under Sections 4(1) and 6 of the Act, when the Tahsildar, Dharmapuri visited Adhagapadi Village on 28.03.2011 for inspection, she was prevented from entering upon the lands for carrying out the inspection, by the farmers and owners of the lands, stating that the lands were fertile dry lands and their major livelihood would be affected, if they were acquired. They also requested and insisted the District authorities that there is availability of barren lands which are unsuitable for agriculture and will not cause damage to anybody, if acquired. In such circumstances, on 06.04.2011, the 3rd respondent addressed a letter to the 5th respondent narrating the incidents which took place on 28.03.2011, in which the Tahsildar, Dharmapuri was prevented by the public and the land owners from inspecting the lands. On 20.04.2011, the Site Selection Committee of the 5th respondent Corporation inspected the lands at Pankunatham and Somanahalli Villages for studying the technical feasibilities for construction of Sub-Station. By a letter dated 21.04.2011, the Power Grid Corporation informed the 3rd respondent that it had inspected the alternate lands at Somanahalli and Pankunatham Villages and that the same is found suitable for establishing the 765/400 KV Sub-Station based on techno economic considerations including transmission lines take off, both present and future requirements and also stated that the requirement of land is about 107 acres. Along with the said letter, the 5th respondent enclosed the revenue map indicating the requirement of area along with tentative general arrangement of switch yard drawing. Then, the 5th respondent requested the 3rd respondent to hand over immediate possession of the land invoking urgency clause u/s 17(1) of the Act as the Sub-Station was scheduled to be commissioned in March 2013. Thereafter, on 28.04.2011, the 5th respondent addressed a letter to the 3rd respondent enclosing the Land Plan Schedule (LPS) for the proposed land to be acquired at Somanahalli and Pangunatham Villages.

20. In the above scenario, what is required to be examined is whether the respondents have strictly complied with the provisions of the Act and the Rules and Procedures contemplated therein.

21. It is seen that the respondents have followed the procedures by getting Administrative sanction u/s 17(2) of the Act by the Government. Thereafter, 4(1) notification was published in the Tamil Nadu Government Gazette and also in local newspapers. Subsequently, Section 6 Declaration was made in the Tamil Nadu Government Gazette and in the local Tamil Newspapers. Thereafter, approval of land valuation was made by the Commissioner of Land Administration, Chennai and Draft Declaration u/s 7 of the Act was approved by the District Collector. Then, enquiry u/s 9(1) of the Act was conducted by the Land Acquisition Officer and the compensation towards crops was also deposited and the same was disbursed to all the land owners except the petitioner and another land owner. Later, physical possession of the lands was taken over by the Power Grid Corporation.

22. In an earlier occasion, the petitioner moved this Court in W.P.No. 10951 of 2011 for a writ of mandamus directing the respondents not to evict him from his patta lands and this Court, by an order dated 21.06.2011, taking note of the circumstances of the case, held as follows:

11.... it is explicitly clear that the only apprehension made by the petitioner is that he may be evicted without following due process of law. Now, as the respondents have vividly stated that only after following the procedures contemplated under the Land Acquisition Act, acquisition proceedings will be taken up by the Government authorities, the apprehension of the petitioner is dispelled. The specific averment made by the 8th respondent in the counter affidavit is recorded and it is made clear that if any proceedings are initiated, it is obligatory on the part of the respondents to proceed only in accordance with law after following the provisions contemplated under the Land Acquisition Act.

The Writ Petition is disposed of with the above observation. No costs. Consequently, connected M.P. Nos. 1 to 3 of 2011 are closed.

Pursuant to the said order of this Court, the respondents have proceeded further in the matter and passed the impugned order.

23. At this stage, it is worth referring to the relevant provisions of the Land Acquisition Act.

4. Publication of preliminary notification and powers of officers thereupon:

(1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].

(2) Thereupon it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf, and for his servants and workmen,-

to enter upon and survey and take levels of any land in such locality;

to dig or bore in the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches;

and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crops, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days" notice in writing of his intention to do so.

6. Declaration that land is required for a public purpose :

(1) Subject to the provisions of Part VII of this Act, [when the [appropriate Government] is satisfied, after considering the report, if any, made u/s 5-A, sub-section (2),] that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders [and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) u/s 5-A, sub-section (2)]:

[Provided that no declaration in respect of any particular land covered by a notification u/s 4, sub-section (1), -

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:]

[Provided further that] no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) [Every declaration] shall be published in the Official Gazette, [and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place

where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration the [appropriate Government] may acquire the land in a manner hereinafter appearing.

24. In view of the above proviso, it is clear that all the procedures contemplated under the Act have been scrupulously followed. But, the only aspect to be examined is whether the petitioner's objections have been heard as contemplated u/s 5-A of the Act and holding enquiry under the said Section has been dispensed with for the reason that taking into consideration of the fact that the acquisition is for public purpose and urgency clause was invoked in view of the power crisis faced by the State and that establishment of Power Grid is very urgent and essential.

25. In this regard, what is questioned by the petitioner is firstly as to why the urgency clause has been invoked before Section 4, which is against the provisions of Section 17 of the Act and secondly, what is the urgency to dispense with enquiry u/s 5-A of the Act.

26. From the events which led to the Land Acquisition process, it is seen that the Ministry of Power, Government of India has given approval for establishment of 765/400 KV Sub-Station at Dharmapuri with Associated Transmission System on 23.06.2010. On 20.07.2010, the Power Grid has requested the District Collector, Dharmapuri for Land Acquisition at Adhagapadi Village near Dharmapuri. The Tamil Nadu Government accorded administrative sanction by G.O.Ms. No. 25, Power Department, dated 25.03.2011, invoking Section 17(2) of the Act. The District Collector, Dharmapuri, on 21.04.2011, requested the Power Grid to choose alternate site at Somanahalli and Pangunatham Villages under urgency clause. Thereafter, 4(1) notification under G.O.(Ms.) No. 68, Energy (C1) Department, dated 30.08.2011 was issued and it was published in the Government Gazette on 30.08.2011 and publication of the same in the local newspapers was made on 03.09.2011 and 04.09.2011. Thereafter, draft Declaration was made on 16.09.2011 in G.O.Ms. No. 76, Energy (C1) Department. While so, the contention raised by the petitioner in this regard that the respondent, with pre-determination and without application of mind, has invoked urgency clause as against Section 17(4) has no legs to stand.

27. As regards the second contention that the acquisition proceedings is vitiated in law, as the respondent has dispensed with 5-A enquiry, the same has to be examined in the light of the legal principles and the provisions of law.

5-A. Hearing of Objections:

(1) Any person interested in any land which has been notified u/s 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, (within thirty days from the date of the publication of the notification),

object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard [in person or by any person authorised by him in this behalf) or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, (either make a report in respect of the land which has been notified u/s 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the [appropriate Government] on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

17. Special powers in cases of urgency :

(1) In cases of urgency, whenever the [appropriate Government] so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government]], free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, [or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity,] the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the [appropriate Government] enter upon and take possession of such land, which shall thereupon vest absolutely in the [Government] free from all encumbrances.

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours" notice of his intention so to do, as such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall, at the time of taking possession, offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage

sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

[(3-A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2), and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto,) shall apply as they apply to the payment of compensation under that section.

(3-B) The amount paid or deposited under sub-section (3-A), shall be taken into account for determining the amount of compensation, required to be tendered u/s 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector u/s 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.]

[(4) In the case of any land to which, in the opinion of the [appropriate Government], the provisions of sub-section (1) or sub-section (2) are applicable, the [appropriate Government] may direct that the provisions of section 5-A 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).]

28. The legislation which provides for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly. Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. 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 land owner or other interested persons.

29. Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before

excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry u/s 5-A will, in all probability, frustrate the public purpose for which the land is proposed to be acquired. The satisfaction of the 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 that the exercise of power is vitiated due to malafides or that the authorities concerned did not apply their mind to the relevant factors and the records.

30. Further, it is the cardinal principle that the exercise of power by the Government u/s 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. Hence, the use of "may" in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power u/s 17(1). The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4.

31. In exercise of power of eminent domain, it has to be emphasized that Article 300-A of the Constitution of India contemplates that none can be deprived of his property under due process of law. Therefore, the acquisition of the property belonging to a private individual is a serious matter and has grave repercussions on his constitutional right of not being deprived of his property without the sanction of law. Therefore, the State must exercise the said power with great care and circumspection. At times, compulsory acquisition of land is likely to make the owner landless. The degree of care required to be taken by the State is greater when the power of compulsory acquisition of private land is exercised by invoking the provisions like the one contained in Section 17 of the Act because that results in depriving the owner of his property without being afforded an opportunity of hearing.

32. In the light of the above legal principles, whether there is any justification to dispense with Section 5-A has to be verified from the records.

33. The Power Grid Corporation of India, the authority under the Government of India, Ministry of Power has requested the said authority to acquire the land for the purpose of establishment of 765/400 KV Sub-Station. Taking into consideration of the fact that the Government and the public at large will be benefitted by the project which is for a public purpose, the Government invoked urgency clause u/s 17(2) of the Act, in view of the fact that the power crisis faced by the State under the present scenario is an alarming issue. Therefore, the State has thought of keeping the project under urgent contingency and has decided to invoke the urgency clause u/s 17(2) of the Act.

34. After following the procedure contemplated in this regard, the Government approved the notification u/s 4(1) of the Act in G.O.Ms. No. 68 on 30.08.2011 for acquisition of land at Somanahalli Village to an extent of 43.16.0 hectares for the public purpose for establishment of 765/400 KV Sub-Station and the publication in accordance with law have been followed scrupulously. Since the Government invoked urgency clause u/s 17(2) of the Act, enquiry u/s 5-A of the Act was dispensed.

35. The total extent of the land required for public purpose is 106.65 acres, which is equal to 43.16.0 hectares of patta lands and 2.27.5 Hectares of poramboke lands at Somanahalli and Pangunatham Villages. It is seen that the petitioner owns lands measuring an extent of 30.12 acres out of total extent of 106.65 acres of patta lands and he owns other vast extent of lands and is also doing real estate business. The lands of the petitioner along with others were acquired after strictly following the legal provisions under the procedures contemplated thereon under the Act and thereafter, after determining the value of the land, the Acquisition Officer has deposited a sum of Rs. 1.63 crores as compensation towards crops for the entire extent of 106.65 acres. It is not in dispute that the project has to be completed within the time frame, i.e. before March 2013, taking into account the larger public interest, the National Power scenario and the power crisis in the State of Tamil Nadu.

36. It is also seen that the Tahsildar, Dharmapuri visited Adhagapadi Village on 28.03.2011 for inspection and she was prevented from entering upon the lands for carrying out inspection, by the farmers and owners of the land stating that the lands were fertile dry lands and if the lands are acquired, their major livelihood would be affected. They also requested the District Authorities that barren lands which are unsuitable for agricultural operations are available and that the same may be acquired, which will not cause damage to anyone and the general public also protested in this regard. In that circumstances, on 06.04.2011, the 3rd respondent/District Collector, narrating the incidents which took place on 28.03.2011, whereby, the Tahsildar, Dharmapuri was prevented from inspecting the lands in question, requested the 5th respondent/Power Grid Corporation to choose alternate lands at Somanahalli and Pangunatham Villages. The 3rd respondent called upon the 5th respondent to examine the technical feasibility for construction of a Sub-Station in the above said Villages. The Power Grid authorities inspected the lands and after conducting detailed technical survey, they found that the said lands are suitable for establishing the 765/400 KV Sub-Station.

37. On 20.04.2011, the Site Selection Committee of the Power Grid Corporation inspected the lands at Pankunatham and Somanahalli Villages with police protection for studying the technical feasibilities for constructing the Sub-Station. By a letter dated 21.04.2011, the 5th respondent informed the 3rd respondent that it had inspected the alternate lands at Somanahalli and Pankunatham Villages and that the same is found suitable for establishing the 765/400 KV Sub-

Station based on techno economic considerations including transmission lines take off both present and future requirements. In the said letter, it was further stated that the requirement of land is about 107 acres. Along with the letter, the 5th respondent enclosed the revenue map indicating the requirement of area along with tentative general arrangement of switch yard drawing. The 5th respondent requested the 3rd respondent to hand over immediate possession of the land invoking urgency clause u/s 17(1) of the Act as the Sub-Station was scheduled to be commissioned in March 2013. Therefore, on 28.04.2011, the 5th respondent addressed a letter to the 3rd respondent enclosing the Land Plan Schedule (LPA) for the proposed land to be acquired at Somanahalli Village.

38. From the above, it is seen that the petitioner is not a poor person having only the piece of land sought to be acquired. Apart from the lands sought to be acquired, the petitioner has in fact got vast extent of other lands and he is also doing real estate business. The petitioner's lands measuring an extent of 30.12 acres alone is acquired for public purpose and considering the acute power crisis faced by the State and the national scenario, the authorities thought it fit to acquire the lands in question immediately, since the project has to be commissioned as scheduled in March 2013 and therefore, urgency clause u/s 17(2) of the Act was invoked, dispensing with 5-A enquiry.

39. Even assuming that the petitioner is entitled for hearing of his objections, it is seen from the pleadings and the statement made that the objections in respect of alternate lands have been considered by the respondents and inspection has been carried out by the authorities concerned. In fact, the Acquisition authority has made a suggestion to the 5th respondent also for alternative site. But, the 5th respondent/Power Grid Corporation, taking into account the technical feasibility and the requirement of 107 acres of land for that purpose including transmission lines take off both present and the future requirements, requested the 3rd respondent to hand over immediate possession of the land invoking urgency clause.

40. In Radhy Shayam's case cited above, there was no real and substantive urgency warranting invocation of urgency clause u/s 17 dispensing with enquiry u/s 5-A and hence the Supreme Court directed the authorities therein to initiate the proceedings afresh from the stage of 4(1) notification. Whereas, this is a case where public interest, urgency in implementation of the time bound project, power crisis in the State and national scenario are involved and hence, enquiry u/s 5-A is not mandatory. Therefore, the said case is not of any help to the petitioner. Even acceding to the contention of the learned counsel for the petitioner, in this case, the objections of the petitioner have been taken into consideration and only thereafter the impugned proceedings are passed.

41. In view of the power crisis faced by the State, delaying the commissioning of the Power Grid project will definitely cause serious prejudice and therefore, emergency clause u/s 17(1) of the Act was invoked for acquiring lands including that of the petitioner for public purpose. The respondents have proceeded with

the acquisition process only after hearing the objections of the petitioner and taking into account the feasibility report. Therefore, dispensation of 5-A enquiry is justified in the above circumstances.

42. Keeping in view the urgency of the project and also the fact that the commissioning is to be made before March 2013, the challenge made to the acquisition proceedings, in the considered opinion of this Court, does not merit consideration and therefore, the contention of the counsel for the petitioner fails in both respects and accordingly, they are rejected.

43. On the question of dispensing with enquiry u/s 5-A, the Supreme Court in several rulings has underlined various principles and also explained the contingencies under what circumstances the protection guaranteed under this Section can be dispensed with. In the case of Mukesh Hans, relied upon by the learned counsel for the respondents, it is held by the Apex Court that Section 17 of the Act is a special provision which empowers the acquiring authorities when so directed by the appropriate Government to proceed to take possession of the land as contemplated in the said section. Under sub-section (4) of Section 17, a further wider power is bestowed on the appropriate Government to even exclude an inquiry u/s 5-A of the Act and if so done, even a declaration u/s 6 of the Act becomes unnecessary and what is necessary was only a publication of Section 4(1) notification. It is further held therein that the governmental schemes of development demand emergent action eliminating summary enquiry u/s 5-A. In Krishan Lal Arneja's case, cited above, the Supreme Court has held that Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down u/s 5-A of the Act in exceptional case of urgency. The same is asserted by the Supreme Court in Devender Kumar Tyagi's case, cited supra, stating that Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. In view of the above rulings of the Supreme Court and considering the facts of urgency involved in this case viz., eminent domain, power crisis, time bound execution of the project etc., it is only to be stated that the respondents are not to be faulted with at any stage of the proceedings in invoking the emergency provision u/s 17 for acquisition of the lands in question.

Writ Petition is, therefore, dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.