
(2014) 04 RAJ CK 0054

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 14243 and 14830/2009

Matloob and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Income Tax Act, 1961 — Section 17, 4, 5A — Land Acquisition Act, 1894 - Section 17, 4, 5, 5A, 9

Citation : (2014) 04 RAJ CK 0054

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : K.C. Sharma and M.C. Jain, for the Appellant; Manju Joshi, Dy. Govt. Counsel and Inderjeet Singh, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Bhandari, J. By these writ petitions, a challenge is made to the Notifications dated 31.03.2008 & 07.09.2009 for acquisition of the land.

2. Learned counsel for petitioners submit that respondent issued Notification under Section 4 of the Land Acquisition Act, 1953 (in short "the Act") on 24.02.2008. After the aforesaid Notification, notice dated 31st March, 2008 was given to invite objection under Section 5 of the Land Acquisition Act of 1894 (hereinafter referred to be "Act of 1894"). The petitioners submitted their objection but without deciding it, Notification under Section 17 and Section 9 of the Act of 1894 were issued. It was in ignorance of the fact that out of various lands sought to be acquired, Khasra No. 348 is of petitioner, Ram Prasad but Notification under Section 4 was issued in the name of Mishraya hence Notification under Section 4 of the Act was not even proper. The respondents thereafter issued declaration under Section 6 of the Act but it was beyond the period of one year thus the entire acquisition proceedings lapsed on that ground itself.

3. It is further stated that after inviting objections under Section 5 of the Act, no

order was passed and Notifications under Section 9 and 17 were issued without showing urgency to invoke Section 17(1) of the Act. The aforesaid provisions were invoked only to make acquisition within a period of limitation for issuance of declaration under Section 6 of the Act. The fact however is that Notification under Section 4 was issued on 24.02.2008 thus, one year expired on 23rd February, 2009 itself and Notifications under Sections 9 and 17 were issued beyond the period provided for issuance of declaration under Section 6 of the Act. Accordingly, impugned Notification/orders deserve to be set aside so as the acquisition proceedings.

4. Learned counsel has referred judgment of Division Bench of this court in the case of Ram Charan Gupta v. State of Rajasthan & Ors, reported in 2007 (3) WLC (Raj.) 139 to show that Section 17(1) and (2) cannot be invoked in ordinary cases but it could be only when there is urgency or emergency so as to invoke provisions of Section 17(1) and (2). In the instant case, no such contingency was existing. The respondents further failed to consider that once objections under Section 5A were called and had been submitted then it cannot be dispensed with in between. If at all the respondents intend to dispense with Section 5A of the Act then there was no need to issue notice to invite objections under the aforesaid provision. Once objections were invited and had been submitted by the petitioners, it should not have been dispensed with by invoking Section 17(4) of the Act. By dispensing with the objection under Section 5A, principles of natural justice have been violated. In those circumstances, Hon'ble Apex Court held the acquisition proceedings to be illegal. To support the arguments, reference of judgment of Hon'ble Apex Court in the case of Laxman Lal (Dead) Through L.Rs. and Another Vs. State of Rajasthan and Others, has been given.

5. Learned counsel for respondents, on the other hand, submits that initially Notification under Section 4 was issued in reference to the provisions of Land Acquisition Act, 1953 though it was by mistake thus amended and new Notification was issued on 19th September, 2008 at Annexure-R4-1. The declaration under Section 6 was within the period specified under the Act. In view of the above, first ground raised by learned counsel for petitioners is not made out because declaration under Section 6 was made in accordance to the provisions of law. He further submits that a notice under Section 5A was given to invite objection and the petitioners had submitted their objections but before it could have been considered, the Notification under Section 17 was issued on 7th September, 2009 followed by notice under Section 9 on 30.10.2009. In view of the aforesaid, decision on the objection was not required because as per Section 17(4), the aforesaid was dispensed with as is coming out from the Notification dated 7th September, 2009. Thus question of violation of principles of natural justice does not arise. It applies only when Section 5A is to be complied. The petitioners have failed to consider that once Notification under Section 17(4) was issued to dispense with Section 5A of the Act, further hearing is not required. In view of the above, none of the judgments referred by the petitioners apply to the instant case. He further submitted that while causing Notification under Section

4, Khasra No. 348 was shown to be of Mishraya. It was as per revenue record available then. The petitioner, Ram Prasad however submitted objection. The subsequent Notifications were issued by referring name of the petitioner, Ram Prasad for Khasra No. 348. Accordingly, acquisition proceedings did not vitiate on that count.

6. Learned counsel further submitted that Section 17(1) was rightly invoked by the respondents. It was looking to the urgency to set up agriculture marketing yard for welfare of agriculturists. In absence of yard, sufferance was caused to the agriculturists of the area concerned and accordingly there is no illegality in invocation of Section 17. A reference of judgment of Hon'ble Apex Court in the case of First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, has been given. Therein, it was held that case of urgency is on subjective satisfaction of the appropriate government. The decision of the government to dispense with inquiry under Section 5A by invoking urgency provision can be challenged only on the ground of non-application of mind and malafides and not otherwise. In the instant case, allegation of malafides does not exist. So far as application of mind is concerned, it exists in view of reasons given above. Further reference of the judgment of Hon'ble Apex Court in the case of Union of India v. K. Balaji Jaya Ram Rao & Ors., reported in (2007) 15 SCC 791 has been given. Therein, it was held that name of owner of the property sought to be acquired is not required to be mentioned in the Notification under Section 4. In view of the above, even if name of the petitioner, Ram Prasad was not mentioned while issuing Notification under Section 4, the acquisition proceedings did not vitiate. The purpose of issuance of Notification under Section 4 has been clarified in the said judgment. It is further held that on issuance of Notification under Section 4, if land is found suitable for public purpose, it is not open for the owner to contend that another land would be more suitable. In fact, it is for the government to decide which land would be suitable for that purpose.

7. I have considered the rival submissions made by the parties and perused the record.

8. The first ground is in regard to lapse of the acquisition proceedings as declaration under Section 6 was made after the period specified under the Act. For that purposes, reference of Notification issued under Section 4 on 24.02.2008 has been given. The respondents have clarified that aforesaid Notification was wrongly issued in reference to Land Acquisition Act, 1953 thus amended and new Notification was issued subsequently on 19th September, 2008 and under Land Acquisition Act of 1894. If period is reckoned from the aforesaid, the declaration under Section 6 is not barred. For ready reference, Sections 4 & 6 of the Act are quoted hereunder:

"4. Publication of preliminary Notification and power 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 authorized by such Government in this behalf, and for his servants and workman,

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"to enter upon and survey and take levels of any land in such locality; to dig or bore into 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 crop, 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 provision of Part VII of this Act, [when the [appropriate Government] is satisfied, after considering the report, if any, made under section 5A, 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 authorized 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 under section 4, sub-section (I) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)];

[Provided that no declaration in respect of any particular land covered by a Notification under section 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 (68 of 1984), shall be made after the expiry of three years from the date of the publication of the Notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 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.

Explanation 1. - In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the Notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2. - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette [and in two daily newspapers circulating in the locality in which the land is situated 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 manner hereinafter appearing."

9. Perusal of Section 4 quoted above reveals as to how many Notifications/publications are required under Section 4. From the aforesaid, it comes out that three publications are required, out of which, one should be in gazette, another in two newspapers and third is a public notice. Section 4 further provides as to which would be last publication and to be referred as the date of publication of the Notification under Section 4. As per provisions aforesaid, the last date of public notice would be referred to the date of publication of notice under Section 4. It is settled law that period between Notification under Section 4 and declaration under Section 6 has to be reckoned taking note of last publication of notice under Section 4 of the Act and first publication under Section 6. It is surprising that neither the petitioners nor the respondents have referred the date of public notice so as to reckon the period between Notification under Section 4 and 6. The petitioners have relied on the Gazette Notification issued on 08.02.2008 under the Act of 1953 though new Notification was issued on 19th September, 2008 under the Act of 1894 and public notice is considered to be last Notification under Section 4 of the Act of 1894. In absence of relevant material, the arguments raised by learned counsel for petitioners could have been

rejected. If argument is still considered in the light of Gazette Notification under Section 4 of the Act, then reliance placed by the petitioners on first Notification dated 08.02.2008 cannot have relevance because it was not issued under Land Acquisition Act, 1894 but Land Acquisition Act, 1953. The acquisition was not made rather could not have been made in reference to the Act, 1953. The respondents accordingly issued new Notification on 19th September, 2008 under the Act of 1894 and it was the first Notification under Section 4 of the Act, 1894 and even from the said date, declaration under Section 6, issued on 07.09.2009, was within time. The earlier Notification was not issued under the Act, 1894 but in reference to the Act of 1953 though not applicable and even petitioner himself has referred the provisions of the Act, 1894 for the purpose of challenge to the acquisition, thus determination of the period cannot be made from Notification dated 04.08.2008. In view of the above, the first argument of the petitioner cannot be accepted.

10. The second issue is in reference to Notification under Section 4, which does not contain name of Ram Prasad. The question for my consideration is as to whether acquisition proceedings vitiate, if name of land owner is not given while issuing Notification under Section 4 of the Act. The aforesaid issue has already been answered by Hon"ble Apex Court in the case of K. Balaji Jaya Ram Rao (supra). The relevant para of the said judgment is quoted hereunder for ready reference:

"A plain reading of Section 4 shows that all that is required is that a notification has to be published in the Official Gazette, in two daily newspapers circulating in that locality of which one must be in the regional language and a public notice of the substance of such notification has to be given at a convenient place in the locality. Section 4 nowhere contemplates that the name of the owner must be mentioned in the notification. This becomes further clear if one reads Section 5-A of the Act. Section 5-A starts with the words "Any person interested in any land which has been notified under Section 4 sub-section (1)...." Thus it also refers to a person interested in a land which has been notified. Section 5-A does not say that the person whose name appears in the notification (sic must be the owner). This also shows that there is no obligation under Section 4 to mention the name of any person. Of course, the object of Section 4 is twofold. One is that there must be public announcement by the Government that the land, specified therein, is needed or likely to be needed for a public purpose. Secondly, it authorises the officers to do all such acts as are set out in Section 4(2) of the Act. This has been so held in M.P. Housing Board V. Mohd. Shafi. The announcement by the Government is in the manner as set out in Section 4 itself. As seen above, all that Section 4 requires is that the notification be published in the Official Gazette and in two daily newspapers circulating in that locality, one of which shall be in the regional language. The Collector has to give public notice of the substance of such notification at a convenient place in the locality. No other requirement is laid down in Section 4. In this case, as has been indicated hereinabove, the notification was published in the Official Gazette, it was

published in the daily newspapers as required. Public notice of the substance of the notification was given at a convenient place in the locality and was also announced by beating of tom toms in the locality. It could not be disputed that the Section 4 notification contained the correct description of the property. Thus the purpose of giving notice to the person, whose land was intended to be acquired, was fully served. The 1st respondent was aware of the notification. He was not in any doubt that it was his property which was intended to be acquired. He, therefore, appeared and filed his objections under Section 5-A."

11. Perusal of para quoted above shows sanctity and requirement of Notification under Section 4 of the Act. It has been clarified that even if the name of land owner is not mentioned in the said Notification, proceeding does not vitiate. In view of the above, second question could have been decided adverse to the petitioner but I find that after new Notification under Section 4 of the Act, the respondents had given a notice to Ram Prasad for seeking objection by referring Section 5 of the Act though objections are to be submitted under Section 5A of the Act and for that purposes, no notice is required to be given to the parties. In any case, the petitioner, Ram Prasad and others had submitted objection though it is stated to be in reference to other Khasra Numbers than Khasra No. 348. I find that purpose of Notification under Section 4 has been specified by Hon"ble Apex Court and once the petitioner, Ram Prasad was having knowledge of the acquisition of land which includes Khasra No. 348, he could have submitted the objection for the aforesaid land also. In any case, now the requirement of the objection has also lost significance after issuance of Notification under Section 17(4) of the Act. The compliance of Section 5A has been dispensed with thus even second argument raised by the petitioner cannot be accepted.

12. The other argument is in reference to Section 5A of the Act, 1894. He submits that once notice was issued calling for objection and even objections were submitted by the petitioner then without an order as per Section 5A, principles of natural justice have been violated. The petitioner has given reference to various judgments of Hon"ble Supreme Court where procedure under Section 5A has been specified and it was held that if proper opportunity of hearing is not given then the acquisition would vitiate.

13. I have considered the aforesaid issue and find that when Section 5A was dispensed with by issuing Notification under Section 17(4) on 9th September, 2008 then question of order on those objections cannot be made. The judgment referred by learned counsel for petitioner are applicable where Section 5A of the Act is not dispensed with. In this case, Notification under Section 17(4) of the Act has been issued. In view of the above, even third argument raised by learned counsel for petitioner cannot be accepted. It is however necessary to comment that even the acquisition officer was not cautious while undertaking the proceedings, inasmuch as, the notice inviting objection was given in reference to Section 5 of the Act, whereas no such requirement exist and infact Section 5 of the Act is for the purpose of payment of damage and not for causing notice to

invite objection. Section 5A of the Act provides for objection within a period of 30 days from the date of publication of notice under Section 4 of the Act. Aforesaid provision does not require a notice to invite objection thereby even if notice was given to invite the objection, it does not vitiate the proceedings but the Land Acquisition Officer is directed to remain careful in future.

14. Now question comes as to whether Section 17 and 9 were rightly invoked by the respondents. Learned counsel submits that without there being urgency in the matter, Section 17 was invoked by the respondents. Reference of judgment of Hon"ble Apex Court has been given where similar exercise was held to be illegal in absence of any emergency.

15. I find that Section 17(1) provides for urgency, whereas Section 17(2) refers to "emergency". Two distinct words "urgency and emergency" cannot be interchanged otherwise there was no reason for legislature to provide two different sub-section under Section 17. In view of the above, "urgency" is distinct than "emergency".

16. The argument of learned counsel for petitioner is in reference to provisions of Section 17(2). There, the provision can be invoked in emergent situation. This case is under Section 17(1) and is not under Section 17(2) of the Act.

17. Learned counsel for respondents have submitted that to establish market yard, provision of aforesaid was invoked. It is keeping in mind that in absence of the market yard, sufferance was causing to the farmers. The market yard is required to safeguard interest of agriculturist thus taking note of the aforesaid Section 17(1) was invoked.

18. I find that the explanation has been given by the respondents. In those circumstances, whether this court is having jurisdiction to make scrutiny as to whether there was a situation of urgency or not.

19. The issue aforesaid has been considered by Hon"ble Apex Court in the case of First Land Acquisition Collector (supra). Therein, it was held that decision of the government to invoke urgency clause should not be interfered by the court unless malafides are shown. In the instant case, no allegation of malafides exists. The other ground is regarding non-application of mind. I find that before invoking provision, the respondents applied their mind and thereupon only, Notification under Section 17 was issued followed by Section 9. Relevant paras of the judgment in the case of First Land Acquisition Collector (supra) are quoted hereunder for ready reference:

"5. The question of urgency of an acquisition under Section 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Section 17 (1) and (4) of

the Act, and issues Notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the concerned authorities. If an order invoking power under Section 17(4) is assailed, the Courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind. Any post Notification delay subsequent to the decision of the State Government dispensing with an enquiry under Section 5 (A) by invoking powers under Section 17(1) of the Act would not invalidate the decision itself specially when no mala fides on the part of the government or its officers are alleged. Opinion of the State Government can be challenged in a Court of law if it could be shown that the State Government never applied its mind to the matter or that action of the State Government is mala fide. Though the satisfaction under Section 17(4) is a subjective one and is not open to challenge before a Court of law, except for the grounds already indicated, but the said satisfaction must be of the Appropriate Government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Government that there was urgency even though cannot be conclusive but is entitled to great weight, as has been held by this Court in *Jage Ram and Others Vs. State of Haryana and Others*, . Even a mere allegation that power was exercised mala fide would not be enough and in support of such allegation specific materials should be placed before the Court. The burden of establishing mala fides is very heavy on the person who alleges it. Bearing in mind the aforesaid principles, if the circumstances of the case in hand are examined it would appear that the premises in question was required for the students of National Medical College, Calcutta and the Notification issued in December 1982 had been quashed by the Court and the subsequent Notification issued on 25.2.1994 also had been quashed by the Court. It is only thereafter the Notification was issued under Section 4(1) and 17(4) of the Act on 29.11.1994 which came up for consideration before the High Court. Apart from the fact that there had already been considerable delay in acquiring the premises in question on account of the intervention by Courts, the premises was badly needed for the occupation of the students of National Medical College, Calcutta. Thus, existence of urgency was writ large on the facts of the case and therefore, said exercise of power in the case in hand, cannot be interfered with by a Court of law on a conclusion that there did not exist any emergency. The conclusion of the Division Bench of Calcutta High Court, therefore, is unsustainable.

6. It is indeed difficult for us to uphold the conclusion of the Division Bench that acquisition is mala fide on the mere fact that physical possession had not been delivered pursuant to the earlier directions of a learned Single Judge of Calcutta High Court dated 25.8.94. When the Court is called upon to examine the question as to whether the acquisition is mala fide or not, what is necessary to

be inquired into and found out is, whether the purpose for which the acquisition is going to be made, is a real purpose or a camouflage. By no stretch of imagination, exercise of power for acquisition can be held to be mala fide, so long as, the purpose of acquisition continues and as has already been stated, there existed emergency to acquire the premises in question. The premises which was under occupation of the students of the National Medical College, Calcutta, was obviously badly needed for the college and the appropriate authority having failed in their attempt earlier twice, the orders having been quashed by the High Court, had taken the third attempt of issuing notification under Sections 4(1) and 17(4) of the Act, such acquisition cannot be held to be mala fide and, therefore, the conclusion of the Division Bench in the impugned Judgment that the acquisition is mala fide, must be set aside and we accordingly set aside the same.

7. The argument advanced on behalf of the respondents is that as the premises in question continued to be under possession of the Calcutta Medical College, invocation of special powers under Section 17 was vitiated and a valuable right of the land owners to file objections under Section 5A could not have been taken away. According to the counsel for the respondents, Section 5A of the Act, merely gives an opportunity to the land owner to object to the acquisition within 30 days from the date of publication of the notification under Section 4, the power under Section 17 dispensing with inquiry under Section 5A can, therefore, be invoked where there exists urgency to take immediate possession of the land, but where possession is with the acquiring authority, there cannot exist any urgency, and, therefore the exercise of that power is patently erroneous. In support of this contention, reliance was placed on the decision of this Court in *Balwant Narayan Bhagde v. M.D. Bhagwat*. We are unable to accept this contention since the same proceeds on a basic misconception about the possession of the premises. The premises in question had been requisitioned under the provisions of the Requisition Act and stood released from requisition by operation of Section 10B of the said Act, since 1993. Even though the premises stood occupied by the students of the medical college, but such occupation was neither as owner nor was lawful in the eye of law. To effectuate lawful possession and the purpose being undoubtedly a public purpose, the State Government had been attempting ever-since December, 1982 and each of its attempt had failed on account of Court's intervention. It is in this context, the legality of exercise of power under Section 17 of the notification dated 29.11.94 is required to be adjudicated upon. In our considered opinion, having regard to the facts and circumstances narrated above, the exercise of power under Section 17 by the State Government, cannot be held to be illegal or mala fide and consequently, the impugned Judgment of the Division Bench of Calcutta High Court cannot be sustained. The learned Judges of the High Court have been totally swayed away by the fact of non-implementation of the directions of Batabyal J., in his order dated 25.8.1994, but that by itself would not be a ground for annulling lawful exercise of power under the provisions of the Land Acquisition Act. We,

therefore, set aside the impugned Judgment of the Division Bench of Calcutta High Court and hold that the acquisition in question is not vitiated on any ground. The acquisition proceeding, therefore, is held to be in accordance with law. The appeal is allowed. There will be no order as to costs."

20. Learned counsel for petitioner has referred the judgment of Hon"ble Apex Court in the case of Laxman Lal (supra). Therein, Sections 17(1) and 17(4) were invoked and it was held to be illegal. If facts of the aforesaid case are looked into, Sections 17(1) & 17(4) were invoked almost after a period of 7 years after issuance of Notification under Section 4. Taking note of the aforesaid and other facts, the exercise of the power under Section 17(1) was held to be illegal. If facts of this case are looked into, the gazette Notification under Section 4 in reference to the Act, 1894 was issued on 9th September, 2008 and obviously publication in two newspapers and public notice must have been caused thereafter to comply with the provision of Section 4. The facts and dates of two further publication have not been given which must be with gape of reasonable time. The Notification under Section 17 is dated 17th September, 2009, which cannot be said to be with the delay, as was the case supra. Thus the judgments referred to above do not apply to the case in hand.

21. The other judgment referred by learned counsel for petitioner is in the case of Ram Charan Gupta (supra). Therein, Notification under Section 17 was held to be illegal as there was lack of application of mind on the part of the State while invoking urgency clause. No reason was given therein but in the case in hand, reasons exist. The need of spacious market for business community was taken to be a bald statement therein. Thus judgment given by the Division Bench was on its own facts.

22. In the instant case, urgency clause has not been invoked on bald and vague statement of facts but after showing the reasons. It is not in dispute that acquisition has been made to establish the market yard and if provisions of Rajasthan Agriculture Produce Market are looked into, it becomes clear that establishment of market yard is to safeguard the interest of the agriculturists. It regulates the market produce so as to get proper price for them. Keeping in mind the objects of the Act, if respondents have invoked urgency clause to meet out dire need of the agriculturists, it cannot be held to be illegal and otherwise this court is not having jurisdiction to enter in those issues as has been held by Hon"ble Apex Court in the case of First Land Acquisition Collector (supra). The jurisdiction for the aforesaid purpose lies with the State Government and interference can be caused only in two situations, first when it is with non-application of mind and second in case of malafide. Both the issues are not made out in this case. In my opinion, this court is having limited jurisdiction to question the reasons given by the State Government to invoke urgency clause as has been held by Hon"ble Apex Court.

23. Taking note of aforesaid aspects, I am unable to hold that Section 17(4) was wrongly invoked by the respondents.

24. The last argument is regarding availability of alternative land in reference to the report given by the Tehsildar. Which land is suitable for acquisition is to be determined by the State Government and cannot be decided by this court as has held by Hon''ble Apex Court in the case of K. Balaji Jaya Ram Rao (supra). The relevant portion of the said judgment is quoted hereunder for ready reference:

"The next ground which found favour with the High Court is: "The reasoning given by the authorities that the owner of the present office building is not attending to the repairs cannot be a justifying ground for the respondent to seek to acquire the property of the petitioner." The High Court has omitted to notice that in the counter, it has also been pointed out that the landlord of the other premises was asking for vacation of that building. If that landlord was asking for vacation of the building then it is clear that some other place was required for the purpose of the post office. There is no challenge to the fact that the acquisition is for a public purpose. Requirement for the purpose of post office would be public purpose. The High Court is not holding that the acquisition is not for a public purpose. It is for the Government to decide whether this property is to be acquired or some other property is to be acquired. It is not open to an owner to say that some other property is more suitable. If that were to be permitted then every owner will say that some other property is better and that the property must be acquired instead of his own. So long as the property was required for a public purpose, the mere fact that some other property could have been acquired is not a ground on which the High Court can say that the reasoning for acquisition is not sufficient."

25. In view of the discussion made above, I do not find any substance in the writ petitions, accordingly, they fail and are dismissed. The interim order passed by this court is vacated.