

(2013) 07 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 31224 and 37886 of 2006 &
Civil Miscellaneous Writ Petition Nos. 31224 and 37886 of 2006

Mkhtyar Ahmad @ Mkhtyar Mehmood

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Citation : (2013) 6 ADJ 694 : (2013) 100 ALR 315 : (2014) 1 AWC 529 : (2013) 121 RD 75 : (2013) 3 UPLBEC 2535

Hon'ble Judges : Surya Prakash Kesarwani, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Siddhartha Verma, Pramod K. Sinha and K. Ajit, for the Appellant;
Krishnaji Khare, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—These two writ petitions have been filed challenging the notifications dated 22nd May, 2006 issued u/s 4 read with Section 17(1) and 17(4) as well as declaration dated 31st May, 2006 issued u/s 6 of the Land Acquisition Act (hereinafter referred to as the Act) for acquiring the agricultural land of the petitioners situate in village Benasirpura alias Ghatampura, Tehsil Sadar, District Rampur. Counter and rejoinder-affidavits have been exchanged in Writ Petition No. 31224 of 2006 which is being treated as leading writ petition.

2. Brief facts giving rise to the writ petitions are; a notification u/s 4(1) read with Sections 17(1) and 17(4) of the Act was issued proposing to acquire 3.989 hectares of land situate in village Benasirpura alias Ghatampura for public purpose, namely, sewage treatment plant in district Rampur. The notification was published in Hindi Daily "Amar Ujala" on 24th May, 2006 and also in Urdu Daily. The declaration u/s 6 was issued on 31st May, 2006. The notice u/s 9 of the Act was issued on 3rd June, 2006 inviting objections to be filed by 17th June, 2006 regarding the land of which possession is proposed to be taken. On 14th June, 2006 notice was issued offering 80% of compensation for the land acquired and

the tenure holders were asked to appear on 17th June, 2006 and receive 80% compensation. The possession of the land was taken and handed over to the acquiring body i.e. Construction Unit of U.P. Jal Nigam, Rampur on 19th June, 2006 for construction of sewage treatment plant (STP). Immediately after taking possession, the Construction Unit of Jal Nigam proceeded for construction in Zone-I and started laying sewer line in various localities of district Rampur. The petitioner filed the present writ petition in this Court in which an order was passed on 6th July, 2006 directing the parties to maintain status quo. Counter-affidavit and rejoinder-affidavit were exchanged. This Court directed the State Government to produce the record of land acquisition proceeding in question. Learned Standing Counsel has produced the original record of the State Government pertaining to the land acquisition proceeding which were perused by this Court.

3. We have heard Sri K. Ajit and Sri Pramod Kumar Sinha, learned counsels for the petitioners, Sri R.K. Chaubey, learned Standing Counsel has been heard for the State and Sri Krishnaji Khare has appeared for the U.P. Jal Nigam.

4. Learned counsel for the petitioners challenging the notification issued u/s 4 read with Section 17(1) and 17(4), has contended that there was no such urgency in the matter so as to dispense with the inquiry u/s 5-A of the Act. It is submitted that sewage treatment plant could be constructed only when sewer pipeline are laid in the entire district. The laying of sewage pipeline takes sufficiently long time, hence there was no occasion for dispensing the inquiry u/s 5-A of the Act since there was no material with the State Government that the sewage pipeline in the district has been laid down. It is submitted that invoking the provisions of Section 17(4) of the Act being without any material, the entire proceedings are vitiated and are liable to be struck down. It is submitted that inspite of the order of status quo passed on 6th July, 2006, the respondents proceeded with construction, hence a contempt petition was also filed. It is further submitted that hardly 1-2 kilometers sewer pipeline have been laid down and all things have come to stand still. It is submitted that construction of sewage treatment plant is not a project of such extreme urgency that inquiry u/s 5-A of the Act should be dispensed with.

5. Learned counsels for the petitioners in support of their submissions have placed reliance on judgments of the Apex Court in the cases of Om Prakash and Another Vs. State of U.P. and Others, , Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, , Anand Singh and Another Vs. State of Uttar Pradesh and Others, , Dev Sharan and Others Vs. State of U.P. and Others, and Division Bench judgment of this Court in the case of Har Karan Singh Vs. State of U.P. and Others, .

6. Sri R.K. Chaubey, learned Standing Counsel, refuting the submissions of learned counsel for the petitioners, has contended that there being urgent need of establishing a sewage treatment plant, the provisions of Sections 17(1) and 17(4) of the Act were invoked. He further submits that in the city of Rampur

there being no sewage treatment plant for treatment of sewage discharge, whole environment was being polluted. The construction of sewage treatment plant was urgent and necessary for immediately relieving the citizen from environmental degradation and for treating the sewage discharge of city. He further submits that possession was taken and handed over the Construction Unit of the U.P. Jal Nigam which has started construction of the plant and sewer line. It is further submitted that sewage treatment plant was being construction in Zone-I and an amount of Rs. 9 crores has already been spent in spreading the sewer line. The construction of the plant was started after 19th June, 2006 but still much work is to be done. The sewer line has been spread in 3/4 part of Rampur City and crores of rupees have already been spent. As per the technical feasibility the sewage plant in question can be established only on the land where it is being constructed. It is further submitted that sewer line and construction of sewage treatment plant is an integrated project which has to be completed urgently. There was sufficient material before the State Government to take a decision that present was a fit case for invoking Sections 17(1) and 17(4) of the Act.

7. Learned Standing Counsel has also placed reliance on the judgments of the Apex Court in the cases of Mahadevappa Lachappa Kinagi and Others Vs. State of Karnataka and Others, , Tika Ram and Others Vs. State of U.P. and Others etc. etc., , Nand Kishore Gupta and Others Vs. State of U.P. and Others, and Shanta Talwar and Another Vs. Union of India (UOI) and Others, .

8. Sri Krishnaji Khare learned counsel appearing for the U.P. Jal Nigam, adopting the submissions of learned Standing Counsel, has submitted that possession of the land was handed over to the Construction Unit of the U.P. Jal Nigam, Rampur on 19th June, 2006. It is submitted that Rampur Sewerage Scheme Zone-I Part-I was sanctioned by the State Government for laying down 27 kilometers sewer line, establishing sewage pumping station and sewage treatment plant and for that an amount of Rs. 22,64,11,000/- was also sanctioned. It is submitted that 22 kilometers sewer line has already been laid down and completed. It is also submitted that more than 60% of sewage pumping station has also been completed and an amount of Rs. 10,65,00,000/- has already been invested. The construction of sewage treatment plant is an urgent work and is to be completed in a time bound manner and the State Government has rightly invoked Sections 17(1) and 17(4) of the Act.

9. We have considered the submissions of learned counsel for the parties and perused the record.

10. The challenge to the acquisition proceeding have been raised mainly on the ground that present was not a case of such urgency so as to invoke Sections 17(1) and 17(4) of the Act. Before we proceed to consider the respective submissions of learned counsel for the parties, it is useful to look into the statutory scheme and the relevant precedent on the subject.

11. Section 4(1) of the Act contemplates issuance of notification by the State

Government whenever it appears to the appropriate Government that the land in a locality is needed or likely to be needed for a public purpose. The notification is to be published in the official gazette and also in accordance with the mode as provided in the said provision. After the notification u/s 4 of the Act, Section 5-A provides that any person interested in any land which has been notified may, within 30 days from the date of publication of the notification, object to the acquisition. Sub-section (2) of Section 5-A of the Act lays down the procedure in connection with such inquiry. Section 5-A further contemplates submission of report by the Collector to the State Government and thereafter follow Section 6(1) of the Act which provides when the appropriate Government is satisfied after considering the report, if any, made u/s 5-A issue the declaration.

12. Section 17 of the Act provides for special power in case of urgency. Sections 17(1) and 17(4) of the Act, which are relevant for the present case, are quoted below:

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.

.....

.....

(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 5A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time [after the date of the publication of the notification] u/s 4, sub-section (1).]

It may be noted that prior to 1984 sub-section (1) of Section 17 could be invoked only in cases of land which was waste and arable. It is only after the Amendment Act 68 of 1984 that Section 17(1) can be invoked for all category of land and the words "waste" or "arable" have been deleted. It is further relevant to note that in the State of U.P. by U.P. Amendment Act 22 of 1954 a new sub-section (1-A) was added in Section 17 which was to the following effect:

17(1-A). The power to take possession under sub-section (1) may also be exercised in the case of other than waste or arable land, where the land is acquired for or in connection with sanitary improvements of any kind or planned development.

13. Thus insofar as the State of U.P. is concerned, the acquisition of land for "sanitary improvements" was permissible for all category of land even before 1984 Amendment in the Act.

14. Sub-section (1) of Section 17 provides that in cases of urgency Collector, though no award has been made, on the expiration of 15 days from the publication of notice u/s 9(1) of the Act can take possession of the land. Sub-section (4) of Section 17 of the Act further provides that where the provisions of sub-sections (1) or (2) are applicable, the appropriate Government may direct that provisions of Section 5-A shall not apply. The opinion to be formed by the State Government u/s 17(1) and 17(4) of the Act although is subjective but the said opinion is to be formed on the basis of relevant materials. What is the scope of judicial scrutiny of the opinion formed by the State Government for invoking Sections 17(1) and 17(4) of the Act has been subject of consideration by the Apex Court in large number of cases.

15. A Full Bench of this Court in the case of 972110--> , of which one of us (Justice Ashok Bhushan) was also a member, has taken note of the relevant judgments of the Apex Court on the subject. It is useful to quote paragraphs 285 and 286 of the said judgment:

285. The first judgment of the Apex Court which need to be noted is in the case of Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, . In the aforesaid case notification u/s 4(1) of the Act was issued for acquisition of 409.6 acres of land for limestone quarry. The notification provided that the case being one of urgency, the provisions of sub-section (1) of Section 17 of the Act applied and it was therefore directed that provisions of Section 5A would not apply to the land. The declaration u/s 6 was issued on 12th September, 1950. The possession of the land was taken by the Collector on 19th November, 1950 and the award was made by the Land Acquisition Officer on 7th January, 1952. On 2nd May, 1955 writ petition was filed in the High Court challenging the notifications taking ground that the land was not for public purpose and the acquisition proceedings were consequently without jurisdiction. It was pleaded that the State Government had no jurisdiction to apply the provisions of Section 17(1) of the Act to the land in dispute. The Apex Court in facts of the above case had occasion to consider the opinion of the State Government formed u/s 17(4) which was said to be subjective opinion. Following was laid down by the Apex Court in paragraph 8 of the said judgment:

8. It is true that the opinion of the State Government which is a condition for the exercise of the power u/s 17(4) of the Act, is subjective and a Court cannot normally enquire whether there were sufficient grounds or justification for the opinion formed by the State Government u/s 17(4). The legal position has been explained by the Judicial Committee in King Emperor v. Shibnath Banerjee and by this Court in a recent case-Jaichand Lal Sethia v. State of West Bengal and others. But even though the power of the State Government has been formulated u/s 17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a Court of Law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide. If therefore in a case the

land under acquisition is not actually waste or arable land but the State Government has formed the opinion that the provisions of sub-section (1) of Section 17 are applicable, the Court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue. It follows therefore that the notification of the State Government u/s 17(4) of the Act directing that the provisions of Section 5A shall not apply to the land is ultra vires. The view that we have expressed is borne out by the decision of the Judicial Committee in *Estate and Trust Agencies Ltd. v. Singapore Improvement Trust*, in which a declaration made by the Improvement Trust of Singapore u/s 57 of the Singapore Improvement Ordinance 1927 that the appellants' property was in an insanitary condition and therefore liable to be demolished was challenged. Section 57 of the Ordinance stated as follows:

57. Whenever it appears to the Board that within its administrative area any building which is used or is intended or is likely to be used as a dwelling place is of such a construction or is in such a condition as to be unfit for human habitation, the Board may by resolution declare such building to be insanitary.

The Judicial Committee set aside the declaration of the Improvement Trust on two grounds; (1) that though it was made in exercise of an administrative function and in good faith, the power was limited by the terms of the said Ordinance and therefore the declaration was liable to a challenge if the authority stepped beyond those terms and (2) that the ground on which it was made was other than the one set out in the Ordinance....

The Apex Court in the said case laid down that opinion of the State Government formed u/s 17(4) can be challenged in Court of law if it could be shown-(i) that the State Government never applied its mind to the matter and (ii) that the action of the State Government is mala fide. Further it was observed that Court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question in issue. The Apex Court in the aforesaid case relied upon the judgment of High Court of Australia in the cases of *R. v. Australian Stevedoring Industry Board*, (1952) 88 C.L.R. 100 and *Ross Clunis v. Papadopollos*, (1958) 1 W.L.R. 546. In the said case the relevant regulations empowered the Commissioner to levy fine when the Commissioner "has reasons to believe". It was contended on behalf of the appellant in the aforesaid case that only duty cast upon the Commissioner was to satisfy himself of the facts set out in the Regulation that the test was a subjective one and that the statement as to the satisfaction in his affidavit was a complete answer to the contention of the respondents. The aforesaid contentions were rejected by the Judicial Committee and the observations of the Judicial Committee has been quoted with approval by the Apex Court, which are to the following effect:

Their Lordships feel the force of this argument, but they think that if it could be

shown that there were no grounds upon which the Commissioner could be so satisfied, a Court might infer either that he did not honestly form that view or that in forming it he could not have applied his mind to the relevant facts.

286. The ratio which is culled out from the aforesaid case is that the opinion of the State Government u/s 17(4) can be challenged in a Court of law if it could be shown-(a) that the State Government never applied its mind to the matter, (b) or that the action of the State Government was mala fide, (c) or that there were no ground upon which the State Government could form such an opinion, (d) or that in forming such opinion it did not apply its mind to the relevant facts. In the aforesaid case the Apex Court held that forming of opinion u/s 17(4) was erroneous. The Apex Court laid down following in paragraphs 22 and 23 of the said judgment:

22. For the reasons already expressed we hold that the State, Government has no jurisdiction to apply the provisions of Section 17(1) and (4) of the Act to the land in dispute and to order that the provisions of Section 5A of the Act will not apply to the land. We are further of the opinion that the State Government had no jurisdiction to order the Collector of Mirzapur to take over possession of the land u/s 17(1) of the Act. The notification dated October 4, 1950 is therefore illegal. For the same reasons the notification of the State Government u/s 6 of the Act, dated October 12, 1950 is ultra vires.

23. We accordingly hold that a writ in the nature of certiorari should be granted quashing the notification of the State Government dated October 4, 1950 by which the Governor has applied Sections 17(1) and (4) to the land in dispute and directed that the provisions of Section 5A of the Act should not apply to the land. We further order that the notification of the State Government dated October 12, 1950 u/s 6 of the Act and also further proceedings taken in the land acquisition case after the issue of the notification should be quashed including the award dated January 7, 1952 and the reference made to Civil Court u/s 18 of the Act.

16. Learned counsel for the petitioners has placed reliance on the judgment of the Apex Court in Om Prakash's case (supra). In the said case the acquisition was for planned industrial development through NOIDA. In the said case the Apex Court had come to the conclusion that there was no relevant material before the State Government for invoking the power under sub-section (4) of Section 17 of the Act. It is useful to quote paragraphs 15, 16 and 25 of the said judgment which were to the following effect:

15. So far as the present proceedings are concerned, the situation was tried to be salvaged further in the counter-affidavit filed on behalf of NOIDA. Its working secretary Ram Shankar has filed a counter-affidavit in the present proceedings explaining the necessity to apply emergency provisions. It has been averred in para. 9 of the counter to the effect that what necessitated application of emergency provisions was imminent possibility of unauthorised construction and/or encroachment upon the suit land which would have hammered the speedy and

planned industrial development of the area which was the purpose of acquisition proceedings. This stand is in line with the earlier stand of NOIDA in its written requisition dated 14th December, 1989. We have already seen that the said stand reflects a ground which is patently irrelevant for the purpose of arriving at the relevant subjective satisfaction by the State authorities about dispensing with Section 5-A inquiry. We could have appreciated the stand of the State authorities for invoking urgency clause u/s 17(4) of the Act on the ground that when about 500 acres of land were to be acquired for further planned development of Sector 43 and other sectors of Noida, as mentioned in the impugned notification, hearing of objectors who might have filed written objections when there are large number of occupants of these lands and who possess about 438 plots of land under acquisition, would have indefinitely delayed the acquisition proceedings and years would have rolled by before Section 6 notification could have been issued. Under these circumstances, the entire further development of the area would have, on the peculiar facts and circumstances of these cases, come to a grinding halt. Such a stand would have justified the subjective satisfaction of the authorities for invoking Section 17(4) of the Act. Such satisfaction then could not have been gone behind by Court of law. But unfortunately for the respondents such was not their case nor did they even whisper in these cases that these aspects were kept in view while dispensing with Section 5-A inquiry. The Court cannot obviously, therefore, make out a new case for them which is not pleaded in these proceedings to justify their action.

16. In the light of the aforesaid factual position emerging on the record of the case it becomes clear that there was no relevant material before the State authorities when it invoked powers under sub-section (4) of Section 17 for dispensing with Section 5-A inquiry while issuing the impugned notifications u/s 4 followed by Section 6 notification of 7.1.1992.

25. In the light of the aforesaid discussion, therefore, the conclusion becomes inevitable that the action of dispensing with inquiry u/s 5-A of the Act in the present cases was not based on any real and genuine subjective satisfaction depending upon any relevant data available to the State authorities at the time when they issued the impugned notification u/s 4(1) of the Act and dispensed with Section 5-A inquiry by resorting to Section 17 sub-section (4) thereof. The first point is, therefore, answered in the negative, in favour of the appellants and against the contesting respondents.

17. A three Judge Bench of the Apex Court in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, , has considered the question as to whether invocation of power u/s 17(4) of the Act in connection with acquisition of land for development of industrial area and residential could be justified. Following observations were made by the Apex Court in paragraphs 40, 41 and 42:

40. In the case before us, the public purpose indicated is the development of an area for industrial and residential purposes. This in itself, on the face of it, does

not call for any such action, barring exceptional circumstances, as to make immediate possession, without holding even a summary enquiry u/s 5A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries u/s 5A of the Act to be completed without any impediment whatsoever to the execution of the scheme. Therefore, the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry u/s 5A of the Act.

41. Again, the uniform and set recital of a formula, like a ritual or mantra, apparently applied mechanically to every case, itself indicated that the mind of the Commissioner concerned was only applied to the question whether the land was waste or arable and whether its acquisition is urgently needed. Nothing beyond that seems to have been considered. The recital itself shows that the mind of the Commissioner was not applied at all to the question whether the urgency is of such a nature as to require elimination of the enquiry u/s 5A of the Act. If it was, at least the notifications gave no inkling of it at all. On the other hand, its literal meaning was that nothing beyond matters stated there were considered.

42. All schemes relating to development of industrial and residential areas must be urgent in the context of the country's need for increased production and more residential accommodation. Yet, the very nature of such schemes of development does not appear to demand such emergent action as to eliminate summary enquires u/s 5A of the Act. There is no indication whatsoever in the affidavit filed on behalf of the State that the mind of the Commissioner was applied at all to the question whether it was a case necessitating the elimination of the enquiry u/s 5A of the Act. The recitals in the notifications, on the other hand, indicate that elimination of the enquiry u/s 5A of the Act was treated as an automatic consequence of the opinion formed on other matters. The recital does not say at all that any opinion was formed on the need to dispense with the enquiry u/s 5A of the Act.....

18. The next judgment relied by learned counsel for the petitioners is *Union of India and others v. Krishan Lal Ameja and others* (supra). In the said case also the acquisition was for the offices and residence of the Government servants. The land for which notification for acquisition was issued by the Delhi Government were already in possession of the Government by virtue of requisition of the said property. The Apex Court in paragraph 16 of the judgment, while considering the scope of Section 17(4) of the Act, made pertinent observations which are as under:

16. Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down u/s 5A 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 land owner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry u/s 5A 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 land owners and the inquiry u/s 5A 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.

19. In Anand Singh's case (supra) challenge was to the acquisition of 209.515 hectares of land for residential colony by the Gorakhpur Development Authority. The question which was considered by the Apex Court in the said case was as to whether invoking of Section 17(4) for the purpose "development of residential colony" was justified. The Apex Court noted earlier judgments of the Apex Court on the subject and held that development of an area for residential purpose takes many years, if not takes decades, hence there is no reason why summary inquiry u/s 5-A of the Act may not be held. Following was laid down in paragraphs 46, 49 and 50:

46. As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency u/s 17(1) are not stated in the provision itself. Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated u/s 5A may not be held and objections of land owners/persons interested may not be considered. In many cases on general assumption, likely delay in completion of enquiry u/s 5A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realising that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously.

49. In a country as big as ours, a roof over the head is a distant dream for a large number of people. The urban development continues to be haphazard. There is no doubt that planned development and housing are matters of priority in a development nation. The question is as to whether in all cases of "planned development of the city" or "for the development of residential area", the power of urgency may be invoked by the Government and even where such power is invoked, should the enquiry contemplated u/s 5-A be dispensed with invariably. We do not think so. Whether "planned development of city" or "development of residential area" cannot brook delay of few months to complete the enquiry u/s 5-A? In our opinion, ordinarily it can. The Government must, therefore, do a balancing act and resort to the special power of urgency u/s 17 in the matters of acquisition of land for the public purpose viz. "planned development of city" or "for development of residential area" in exceptional situation.

50. Use of the power by the Government u/s 17 for "planned development of the city" or the development of residential area" or for housing" must not be as a rule but by way of an exception. Such exceptional situation may be for the public purpose viz., rehabilitation of natural calamity affected persons; rehabilitation of persons uprooted due to commissioning of dam or housing for lower strata of the society urgently; rehabilitation of persons affected by time bound projects, etc. The list is only illustrative and not exhaustive. In any case, sans real urgency and need for immediate possession of the land for carrying out the stated purpose, heavy onus lies on the Government to justify exercise of such power.

20. The next case relied by learned counsel for the petitioner is Dev Sharan's case (supra). In the said case the land was acquired for construction of District Jail. The Apex Court in the said case noticed that there was a time gap of 11 months and 23 days in issuance of notification under Sections 4 and 6 which shows that there was no urgency for acquiring the land so as to warrant invoking of Sections 17(1) and 17(4) of the Act. Following was laid down in paragraphs 37 and 38 of the said judgment;

37. Thus the time which elapsed between publication of Section 4(1) and Section 17 notifications, and Section 6 declaration, in the local newspapers is of 11 months and 23 days, i.e. almost one year. This slow pace at which the Government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Section 17(4) of the Act.

38. In paragraph 15 of the writ petition, it has been clearly stated that there was a time gap of more than 11 months between Section 4 and Section 6 notifications, which demonstrates that there was no urgency in the State action which could deny the petitioners their right u/s 5A. In the counter which was filed in this case by the State before the High Court, it was not disputed that the time gap between Section 4 notification read with Section 17, and Section 6 notification was about 11 months.

21. The last judgment relied by learned counsel for the petitioners is the Division Bench judgment of this Court in Har Karan Singh's case (supra) in which case the Division Bench of this Court was considering challenge to acquisition of 589.188 hectares of land in village Patwari for planned industrial development of NOIDA. The said acquisition was also for the purposes of industrial and residential development and the Division Bench of this Court relying on judgments of the Apex Court had held that invocation of Section 17(4) of the Act was not justified.

22. The parameters for invoking Sections 17(1) and 17(4) have been clearly laid down. Insofar as the acquisition for residential colonies or for industrial development is concerned, it has been held that inquiry u/s 5-A be not normally dispensed with except by way of exception. As has been noted above, although the State Government forms opinion under Sections 17(1) and 17(4) of the Act on its subjective satisfaction but such opinion has to be formed on the basis of relevant materials, and opinion of the State Government u/s 17(4) can be challenged in the Court of law if it could be shown-(a) that the State Government never applied its mind to the matter, (b) or that the action of the State Government was mala fide, (c) or that there were no ground upon which the State Government could form such an opinion, (d) or that in forming such opinion it did not apply its mind to the relevant facts.

23. The present is a case where acquisition has been made for construction of sewage treatment plant. Whether acquisition for sewage treatment plant in the facts of the present case can be said to be matter of such urgency where State Government was justified in invoking Sections 17(1) and 17(4) of the Act is question to be answered.

24. It is stated in the counter-affidavit that in district Rampur there has been no sewage treatment plant and the State Government had sanctioned scheme for construction of sewage treatment plant in district Rampur. It will be useful to note a judgment of the Apex Court in which challenge to the acquisition proceeding for construction of sewage treatment plant was raised i.e. Jai Narain and Others Vs. Union of India and Others, . In the said case the land acquisition was made for construction of sewage treatment plant at Keshopur, Delhi. The submission was raised that acquisition was not of such urgent nature that inquiry u/s 5-A should have been dispensed with. It was observed by the Apex Court that object and purpose of constructing the STP is to protect the environment and control the pollution. Following was laid down in paragraph 12 of the judgment:

12. So far as the second contention raised by Mr. Vashisht, the same is mentioned to be rejected. Whatever may be the user of the land under the Master Plan and the Zonal Development Plan the State can always acquire the same for public purpose in accordance with the law of the land. In any case the object and purpose of constructing the STP's is to protect the environment, control pollution and in the process maintain and develop the agricultural green.

25. The environmental degradation and pollution in urban areas of the State of U.P. is now a common feature. The causes for pollution in urban area are many. One of the causes for pollution and environmental degradation is Municipal Bodies/Local authorities being unable to treat the sewage generated in the city. The project for laying down sewer line and construction of sewage treatment plant has been sanctioned by the State for district Rampur. Insofar as the submission of counsel for the petitioner that sewage treatment plant could be constructed only when sewer line is laid in each locality of the district Rampur and there being no material before the State Government that sewer line has been laid, Section 17(4) of the Act could not be invoked, suffice it to say that laying of sewer pipeline and construction of sewage treatment plant are integrated project and both can be initiated/carried on together. The case of construction of sewage treatment plant and laying of sewer pipeline in densely populated city where there is no sewage treatment plant cannot be put on the same footing as construction of residential colony or industrial development. The cases of *Om Prakash, Union of India v. Krishan Lal Arneja*, *Anand Singh and Har Karan Singh* (supra) were all cases where acquisition was for residential colony or for industrial development. In facts of those cases, the Court held that there was no sufficient material before the State Government to form an opinion for dispensing the inquiry u/s 5-A of the Act. The present is a case where acquisition of land for construction of sewage treatment plant has been challenged.

26. The judgment relied by the learned Standing Counsel in *Nand Kishore Gupta's* case (supra) and other cases were also the cases where same proposition has been laid down by the Apex Court for invoking Sections 17(1) and 17(4) of the Act as have been noted above.

27. Now the question to be considered is as to whether there was any material before the State Government for forming an opinion that present was a fit case for invoking Sections 17(1) and 17(4) of the Act. Learned Standing Counsel has produced the original records of the State Government at the time of hearing. We have perused the original record. The original record contains Prapatra-10 which was a certificate for invoking Section 17 of the Act. The certificate was issued in Prapatra-10 recommending invocation of Section 17 of the Act and a separate note was made part of the certificate. The note which is part of the certificate (Prapatra-10) is quoted below:

28. The aforesaid note as well as the certificate were very much before the State Government when the State Government took a decision for invoking Sections 17(1) and 17(4) of the Act. Thus it cannot be said that there was no material before the State Government for forming an opinion that this is a fit case for invoking Sections 17(1) and 17(4) of the Act. We are thus of the opinion that there was sufficient material before the State Government for invoking Sections 17(1) and 17(4) of the Act.

29. The petitioners in the writ petitions have also pleaded that entire exercise has been undertaken under the orders of the Minister of Urban Development.

Neither Minister of Urban Development, U.P. has been impleaded in the writ petition nor there are any material on the record to prove any bias or mala fide.

30. It is also relevant to note that construction of STP and laying down of sewer pipeline have already started and according to pleadings in the counter-affidavit more than 6 crores has been spent by the State Government and sewer pipeline of 23 kilometers out of total 34 kilometers has already been laid down. Laying down of sewer pipeline without running of sewage treatment plant shall render the entire exercise waste.

31. From the foregoing discussions, we are of the view that there was sufficient material before the State Government for invoking Sections 17(1) and 17(4) of the Act and the submission of the petitioners' counsel that present was not a case where the inquiry u/s 5-A of the Act could be dispensed with cannot be accepted.

32. No case is made out to quash the notification u/s 4 read with Section 17(1) and 17(4) of the Act and declaration u/s 6 of the Act. Both the writ petitions are dismissed.