

(1980) 09 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 472 of 1977 and 19, 20, 338, 339, 340 and 395 of 1978

Motiyan and

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-09-1980

Acts Referred:

Constitution of India, 1950 — Article 141, 226
Land Acquisition Act, 1894 — Section 17, 17(4), 5A
Rajasthan Land Acquisition Act, 1953 — Section 17(4), 5A

Citation : AIR 1981 Raj 284 : (1981) RLW 448

Hon'ble Judges : Guman Mal Lodha, J

Bench : Single Bench

Advocate : Panna Chand Jain, Prem Ashopa and L.N. Jain, for the Appellant;
M.I. Khan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Guman Mal Lodha, J.—These writ petitions, seven in number, have been filed against the land acquisition proceedings, taken by the respondents in respect of land covered by the following Khasra Nos. situated in Village Bhadana Teh. Ladpura, District Kota.

Khasra No. including measurment. Name of Khatedar tenant/petitioner,

1. 494/133, 230. 392/238 measuring 12 Bigba 23 Bigba In Biswa & 15 Biswas respectively: Laxmichand S/O Madholal Meena R/O Vil-Deh, Tah. Ladpura (Kota)

2. 156 418/156 421/156 & 157 measuring 35 Bigha 5 Biswa 1 Bigha, 15 Biswa 1 Bigha 11 Biswa respectively; Ramnath S/O Shri, Chhoga Lodha R/O VII. Dab Tah. Ladpura (Kota)

3. 326, 136, 158 measuring 17 Bighas & 18 Biswas, 29 Bighas & 2 Biswas respectively ; Bajrang S/O Chaturbhuja Ramlal S/O Chaturbhuja

4. 147 measuring 26 Bighas 3 Biswas Chhitarlal S/O Narain
5. 153 measuring 5 Bighas 18 Biswas Ram Kishan. Rambai Ram Nathi Soorajmal & Laxmi Narain;
6. 148 Area 12 Biawas
495/133 13 Bighas 15 Biswas
496/257 25 Bighas 16 Biswas
Total 40 Bighas 6 Biswas.
7. 325/136 measuring 47 Bighas 1 Biswa Motiyan Widow of Bheru Bhittar S/O Lt. Bheru.

2. Since a common question of law is involved and the facts are not different, all these writ petitions are decided together by one common judgment as prayed by both the learned counsel for the parties.

3. Petitioners claim that they are in lawful and peaceful possession of the said land and are cultivating this land in question for the last more than 25 years. Out of this land some part of land are to be acquired by the respondents for allotment to M/s. Rajasthan State Industrial & Mineral Development Corporation, Jaipur.

4. Earlier, M/s. Industrial Oxygen Co. Pvt. Ltd., have proposed to instal a paper mill at Kota and selected an area of 80 acres of land at Bhadana Village. This land was to be allotted to R. I. M. D. C. and the said Corporation was to hand over it to M/s. Industrial Oxygen Co. Pvt. Ltd.

5. A notification dated 30-7-76 was issued u/s 4 of the Rajasthan Land Acquisition Act, 1953 (hereinafter to be called as "the Act"). First it was mentioned that the land is needed for allotment to M/s. Industrial Oxygen Pvt. Ltd., Company but later on, by a corrigendum the mistakes were corrected by mentioning that it is needed for R. I. M. D. C, Again, another notification was issued on 23rd August, 1976, declaring that this land is needed for public purpose for allotment to R. I. M. D. C. and further it was mentioned that the provisions of Sub-section (5A) shall not apply.

6. In pursuance of this, the Land Acquisition Officer directed the Tehsildar, Ladpura, Kota to take possession of the land. The Tehsildar in term issued an order dated 27th Sept., 1977 that they would like to take possession of this land, and therefore, appropriate action may be taken for the same.

7. Petitioners then represented against the above order dated 27th September, 1977, by which various persons were asked to vacate the land. A notice u/s 9 (1) of the Act was issued on 21 December, 1976 and no personal notice was issued. Petitioners' case is that in view of their representations, the District Magistrate, Kota directed Land Acquisition Officer vide his letter dated 10th March, 1977 to refrain from taking possession of this land.

8. Petitioners claim that the land was neither needed nor likely to be needed for public purpose and preliminary proceedings contemplated by Section 4 have not been completed. In fact, no inquiry was made whether the land is suitable or not, and no report as required by Section 4 was submitted to the Collector.

8A. The petitioners, in all these cases, have raised manifold objections to the acquisition proceedings. It has been argued that the land is being acquired for a company or a corporation and would not come within the definition of "public purpose", that no agreement has been published as required by the provisions of the Act, that there is no urgency warranting dispensing with the requirement of the inquiry u/s 17, u/s 5-A of the Act and the relevant rules.

9. All the above contentions have been vehemently opposed by Mr. Khan, learned Government Advocate appearing on behalf of the State. According to him, the land is being acquired for the Rajasthan Industrial Mineral Development Corporation (hereinafter called to be as "the R. I. M. D. C.") and this is in pursuance of the agreement of 1974 between the State of Raj. and the R. I. M. D. C. This Corporation is a company registered under the Indian Companies Act and is a Government Company. Purpose of acquisition is that the State would acquire the land for the R. I. M. D. C., which, in terms, would make allotment for establishment of certain industries. It was pointed out that such a purpose came within the meaning of public purpose and in any case, a land can be acquired for the purpose of even a Company. Mr. Khan, learned Government Advocate, also pointed out that the land under cultivation is also arable land.

10. Regarding the publication of the agreement, Mr. Khan, learned Government Advocate pointed out that this can be done at any subsequent stage and is not condition precedent for such acquisition.

11. Though all the contentions were vehemently pressed by the petitioner and opposed with vehemence by the learned Government Advocate, it appears that it is not necessary to deal with all of them, because the basic question, which has emerged during the arguments is whether it can be said that there was urgency due to which an inquiry u/s 5A of the Act and the relevant rules where all the questions could have been considered, could have been dispensed with.

12. Section 17 (4) reads as under:--

"(4) In the case of any land to which in the opinion of the State Government the provisions of Sub-section (1) or Sub-section (2) are applicable, the State 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 publication of the order under Sub-section (1) of Section 4."

13. Section 5-A read as under:--

"5-A. Hearing of Objections -- (1) Any person interested in any land in respect of which a notice has been given under Sub-section (5) of Section 4, as being proposed to be acquired for a public purpose or for a company may, within thirty

days after the service of the public notice in the manner provided in Section 45 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 either in person or by pleader shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the State Government together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the State 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."

14. A reading of both the provisions together would show that unless inquiry u/s 5A is dispensed with by the Collector by a notification u/s 17 (4), all the questions, which have been agitated in this case, could have been and can be taken note of by the authorities concerned, themselves.

15. M. Khan, learned Government Advocate submitted that by virtue of a judgment of the Division Bench of this Court in Gopal Singh and Another Vs. State of Rajasthan and Another, , wherein it was held that question of existence of urgency is not justiciable, paras 18 to 21 of this judgment deal with the question of urgency and also, whether it is justifiable. Paras 20 and 21 are as under:

"20. We have given due consideration to this argument. We agree with the learned Deputy Government Advocate to the extent that a question whether an urgency exists or not is a matter for the determination of the Government and it is not a matter for judicial review. In A. Natesa Asari Vs. State of Madras and Another, , referred above, it was observed by the learned Judges of a Division Bench of the Madras High Court that "whether an urgency exists or not is a matter solely for the determination of the Government and it is not a matter for judicial re view". The same view has been followed in Harihara Prasad v. Jagannadham, (AIR 1955 Andh Pra 184) and Iftikhar Ahmed v. State of Madhya Pradesh, (AIR 1961 Madh Pra 140). It may further be ob served that since the notification Ex. G. was issued in Hindi, it could not be pro per to lay much stress on the connotation of the words. ^vR;Ur vko";d*. It is common knowledge that the vocabulary of legal terms in Hindi is not as extensive and precise as in English. The word ^vko";d* is no doubt, ordinarily used in the sense of necessary and, therefore, strictly speaking ^vR;Ur vko";d* may be translated as "very necessary." In English language, "very necessary" would not be equivalent to urgency, but in Hindi, it cannot be said that the words ^vR;Ur vko";d* could never have been used in the sense of urgency. We do not, therefore attach much importance to the so called defect pointed out by learn ed counsel for the

petitioners in the notification, but the land could not be acquired merely by this notification, unless it was followed by a declaration u/s 6. We do not agree with the contention of the learned Deputy Government Advocate that the declaration Ex-F. Should be taken to have been made subsequent to Ex, G., simply because it was published later on in the gazette dated 3rd Aug, 1961. A perusal of Ex. F. shows that this declaration was made on 3rd June, 1961, i.e. long before the notification Ex. G was prepared. It appears that when Ex. F was issued, the Government was not even aware of the urgency for acquiring the land. The mere fact that its publication Ex. F was delayed in the press would not mean that it was issued after the notification Ex. B, was made. There being no subsequent valid declaration u/s 6, the further proceedings, which were taken u/s 9 and which culminated in the award, were also invalid and, therefore, it seems proper to quash all of them.

21. Before parting with the case, it would not be out of place to observe that under the Constitution of India, all citizens have a fundamental right to acquire, hold and dispose of their property. The Land Acquisition Act, no doubt, enables the Government to acquire their property if it is needed for purposes mentioned therein, but it is extremely necessary that the provisions of this Act, should be strictly followed. Normally, every person, who has interest in the land, which is sought to be acquired, should have "a notice of the notification which is issued u/s 4 (1), so that he is able to file his objection, if there be any. He should also have an opportunity of being heard. The law requires that there should be a proper inquiry and then the decision upon his objections should be that of the Government and not of the officer inquiring into them. It only after a decision regarding his objections is given, that a declaration u/s 6 of the Act should be made. In cases of urgency, special powers have been given under Sub-sections (1) and (4) of Section 17 of the Act. The question of urgency may not be justiciable, but the powers must be used only when there is urgency and they should not be used just to cover up the deficiencies, if any, left out by officers concerned u/s 4 (1) or Section 5-A. In the present case, we find that although a move about acquiring the petitioners' land and commenced as early as in 1955, it was dropped in January 1959. The question was again taken up towards the end of 1959 and the first notification u/s 4 (1) was published in August 1960. The petitioners presented their objections on 3rd November, 1960 but they were just ignored and a declaration u/s 6 was made on 3rd June, 1961. It appears that the notification Ex. G was then issued on 20th June, 1961 showing an urgency and this has given a handle to the petitioners to allege that it was made just to cover up the defects of procedure left out by the Collector u/s 5A. Learned counsel has thus challenged the validity of Ex G on the ground of mala fides also, but we have not considered it necessary to go into that question, because, as we have already pointed out above, there being no subsequent declaration u/s 6, Ex. G had no importance left and the further proceedings were, therefore, not valid."

16. In reply to the above, Mr. Jain, learned counsel for the petitioners, pointed out that the recent judgment of the Bombay High Court in Yesho Nathu Mahajan

and Another Vs. The State of Maharashtra and Others, relates to the question whether there was urgency in a given case is or is not justiciable and held that it is subject to judicial review. Bombay High Court observed as under:--

"When application of urgency clause is challenged, the minimum expected from the State is a disclosure of the circumstances that weighed with it while doing so. Abstract justification replete with conjectures is no answer". (H. N. (C.).)

17. The Bombay High Court, even after holding that the acquiring authority is the best Judge of the situation and its decision basically subjective, would normally not be interfered with by the High Court, further observed as under:--

"But where no factor is disclosed and no consideration revealed, where the court is left in the dark and the aggrieved person left in the lurch, application of urgency clause is put in serious jeopardy, it stands exposed to court's interference; and renders itself liable to be struck down." (Para 7)

18. The same High Court worked against misuse of urgency clause, observed as under:

"Application of urgency clause cannot be a substitute for the laxity on the part of the State administration in expeditiously initiating acquisition proceedings. Nor can it be invoked to make up for the delay caused only because of the lethargy on the part of the administration."

(Para 8)

19. The Court then applied the principles of the particular fact of that case, where land was acquired for house sites to landless workers, and observed as under:--

"Citizens" or persons" property can be acquired in accordance with law but in the absence of a real and genuine urgency which is the heart and the ABC of an urgency clause would it be too much to require the State Government to permit the aggrieved party or person a fair and just opportunity of putting forth his or its objections for due consideration of the acquiring authority? The impugned acquisition herein is not shown to be of such exceptional nature as cannot await even the minimum requirement of a hearing contemplated under the Land Acquisition Act. Indeed, in this very case, one finds that though need for acquisition was felt right from the year 1971, even so, for years together the State itself did not at all actively move in the matter with any urgency till it chose to issue in its own sweet time Section 4 notification four years thereafter."

20. The crux of the principle of urgency was spelled out when the Court observed that the purpose such as providing house sites cannot be said to spring into existence overnight unless, of course, it is caused on account of earthquake or flood. It observed as under :

"That a given purpose is laudable is not by itself sufficient to vindicate the application of urgency clause so as to obviate even the minimal requirement of a

hearing. Purpose such as providing house sites or extension of gaathan cannot be said to spring into existence overnight unless, of course, it is a result of some unexpected, exceptional or extraordinary situation or development such as, for instance, an earthquake or flood or some specific clear-cut time bound project likely to be rendered ipso facto nugatory and infructuous by even such lapse of time as would occur in the case, of an acquisition without the urgency clause. While applying the urgency clause, the State should, indeed, act with considerable care and responsibility."

(Para 5)

21. It would thus be seen that the views expressed by the Bombay High Court in the case of *Yesho Nathu Mahajan and Another Vs. The State of Maharashtra and Others*, and Rajasthan High Court in *Gopal Singh and Another Vs. State of Rajasthan and Another*, (supra), are divergent and there is obvious difference of opinion between two High Courts.

22. Bombay High Court's view is based on the judgment of the Supreme Court in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, . Hon"ble the Supreme Court was considering a case of "acquisition for the public purpose" of development of area for industrial and residential purposes. In Para 7 of judgment in *Yesho Nathu Mahajan's* case (supra), Bombay High Court has extracted the following portion from the judgment of the Supreme Court:

"Where certain lands are- sought to be acquired and the public purpose indicated in the notification is the development of area for industrial and residential purposes that 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 5-A 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 any enquiry u/s 5A of the Act."

"Section 17 (4) cannot be read in isolation from Sections 4 (1) and 5A of the Act. The immediate purpose of a notification u/s 4 (1) of the Act is to enable those who may have any objections of an enquiry u/s 5A of the Act. It is true that, although only 30 days from the notification u/s 4 (1) are given for the filing of these objections u/s 5A of the Act, yet sometimes the proceedings u/s 5A, are unduly prolonged. But considering the nature of the objections, which are capable of being successfully taken u/s 5A, it is difficult to see why the summary enquiry should not be concluded quite ex-peditiously."

23. Hon"ble the Supreme Court in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, has dealt with important question of judicial review about the urgency which forms the bed-rock of notice u/s 17 (4) of the Act, in

details in Paras. 36, 37, 38, 39, 40, 41 and 42. In Para. 37, Hon"ble the Supreme Court observed as under:

"We think that Section 17 (4) cannot be read in isolation from Sections 4 (1) and 5A of the Act. The immediate purpose of a notification u/s 4 (1) of the Act is to enable those who may have any objections to make to lodge them for purposes of an enquiry u/s 5A of the Act. It is true that, although, only 30 days from the notification u/s 4 (1) are given for the filing of these objections u/s 5A of the Act. Yet, sometimes the proceedings u/s 5A are unduly prolonged. But, considering the nature of the objections which are capable of being successfully taken u/s 5A, it is difficult to see why the summary enquiry should not be concluded quite expeditiously. In view of the authorities of this Court, the existence of what are prima facie public purposes, such as the one present in the cases before us, cannot be successfully challenged at all by objectors. It is rare to find a case in which objections to the validity of a public purpose of an acquisition can even be stated in a form in which the challenge could succeed. Indeed, questions relating to validity of the notifications on the ground of mala fides do not seem to us to be ordinarily open in a summary enquiry u/s 5A of the Act. Hence, there seems to us to be little difficulty in completing enquiries contemplated by Section 5A of the Act very expeditiously."

24. Hon"ble the Supreme Court then observed that the mind of the Officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings u/s 5A of the Act should be eliminated.

25. The Hon"ble Supreme Court then further observed that "it is not just the existence of an urgency but the need to dispense with an inquiry u/s 5A which has to be considered."

26. After emphasizing the object of Section 17 (4) of the Act, Hon"ble the Supreme Court then gave a typical example of urgency, like sudden change of the course of a river, and operation of natural physical forces beyond human control, in Para. 39.

27. Barring the above type of typical cases of the urgency, the Supreme Court was of the opinion that in other cases, the particulars of what is obviously to be done in public interest need not be concealed when its validity is questioned in a Court of justice. Not satisfied with the above, the Court further observed that the questions involving consideration of facts which are especially within the knowledge of the authorities concerned, may be raised in other cases and if they do not discharge their duty or special burden imposed u/s 106 of the Evidence Act, without disclosing a sufficient reason for their abstention from disclosure, they have to take the consequences which flow from the non-production of the best evidence which could be produced on behalf of the State, if its stand was correct.

28. In Para. 41, Hon"ble the Supreme Court emphasised that such provisions

should not be utilised by using phrase of urgency like "ritual" or "mantra". Commenting on the need of providing land for industrial development schemes, Hon"ble the Supreme Court observed that though they are urgent in the context of the country"s need for increased production but the very nature of such schemes of development does not appear to demand such emergent action as to eliminate summary inquiry u/s 5A of the Act. Para. 42 read as under:

"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 enquiries u/s 5A of the Act. There is no indication whatsoever in the affidavit filed on behalf of the State that 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 the 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. It is certainly a case in which the recital was at least defective. The burden, therefore, rested upon the State to remove the defect, if possible, by evidence to show that some exceptional circumstances which necessitated the elimination of an enquiry u/s 5A of the Act and that the mind of the Commissioner was applied to this essential question. It seems to us that the High Court correctly applied the provisions of Section 106 of the Evidence Act to place the burden upon the State to prove those special circumstances although it also appears to us that the High Court was not quite correct in stating its view in such a manner as to make it appear that some part of the initial burden of the petitioners under Sections 101 and 102 of the Evidence Act had been displaced by the failure of the State to discharge its duty u/s 106 of the Act. The correct way of putting it would have been to say that the failure of the State to produce the evidence of facts especially within the knowledge of its officials, which rested upon it u/s 106 of the Evidence Act, taken together with the attendant facts and circumstances, including the contents of recitals, had enabled the petitioners to discharge their burdens under Sections 101 and 102 of the Evidence Act."

29. In the instant bunch of cases, it would now be useful to extract the actual allegations about the, lack of urgency as alleged by the petitioners and their reply by the respondents as contained in Para. 12-H of writ petition and the reply filed by the respondents. Para. 12-H of writ petition reads as under:--

"Because the Notification dated 23-8-1976 purported to be issued u/s 17 Sub-clause (4) of the said Act dispensing with the formalities of Section 5-A is illegal and ultra vires the powers of the Govt. The special powers conferred u/s 17 can only be invoked in cases of urgency as to the matter and the condition of the land. The Government has to be satisfied in this regard for two objectives; one that there is urgency and need to dispense with an enquiry u/s 5-A and the other

that the land is waste or arable and subjective satisfaction of the same in respect of these objectives is a condition precedent to the exercise of powers u/s 17. It is submitted that both the conditions in this particular case are lacking. The very statement of the public purpose for which the land was to be acquired indicated the absence of any urgency, on the apparent facts of the case as to require the elimination of the enquiry u/s 5-A of the Act. Further the powers u/s 17 can only be invoked in the case of arable and waste land. No such enquiry was made as to the fact whether the land is arable and waste land.

30. Para, 12-H of the reply filed by the respondents, reads as under:

"Sub-para, (h) is denied. There is no violation of the provision of the Act. The land is acquired for public purposes The notification is not violated as alleged by the petitioner."

31. In addition to the above, in reply to paras Nos. 1 & 2, State of Rajasthan respondent also mentioned the requirement of urgency in the following words,:

"1. That in Para. 1 of the writ petition it is admitted that the petitioner is a Khatedar tenant of agricultural land situated in village Bhadana. Portion of this land measuring 31 bighas 11 biswa of Khasra Nos. 156 and 157 is being acquired by Land Acquisition Officer, Chambal Project, Kota for being allotted to M/s. Rajasthan State Industrial & Mineral Development Corporation, Jaipur.

2. That with regard to Para. 2 it is submitted that the Government of Rajasthan Department of Industries issued a notification No. 6 (4) Ind/I/76 dated 30th July, 1976 whereby it was mentioned that the State Govt. considered it necessary and expedient to acquire land needed or likely to be needed for a public purpose i.e. for M/s. Industrial Oxygen Co. Pvt. Ltd. The Government of Rajasthan Department of Industries issued another notification No. F. 4 (4) Ind/I/76 dated 31 July, 1976 by way of corrigendum wherein the public purpose for which the land was acquired to be mentioned as for M/s. Rajasthan State Industrial & Mineral Development Corporation Ltd. and not for M/s. Industrial Oxygen Co. Pvt. Ltd., as mentioned in Annexure R. 1 referred to above. This corrigendum dated 31st July, 1976 is marked Annexure R. 2.

From the aforesaid notification it would be evident that the State Government considered it necessary or expedient to acquire the land in question which was needed or likely to be needed for public purpose i.e. for Rajasthan State Industrial & Mineral Development Corporation. It is submitted that the Rajasthan State Industrial & Mineral Development Corporation is a company incorporated under the Companies Act, 1956.

That an agreement was made on 14th March, 1974 between the Governor of State of Rajasthan hereinafter called the Government on the one part and M/s. Rajasthan State Industrial & Mineral Development Corporation on the other part, which is a company within the meaning of Section 617 of the Companies Act, having one of its objects as promotion of Industries in the State of Rajasthan.

Whereas the company required land for carrying out its object of developing industries the Government had agreed to provide land as required by the Company. The Government which was agreed between the parties "that the Government shall, provide out of land whichever available as well as acquiring the private land and shall transfer the same to the Company on such terms and conditions as may be specified by the Company". From the aforesaid fact it is evident that the Government had agreed to provide land out of by acquiring the Private land to transfer the same to the Company. Moreover the Company is a Government Company within the meaning of Section 6(17) of the Companies Act, 1956 as mentioned above. The copy of the agreement which was executed between the Government and Rajasthan State Industrial & Mineral Development Corporation is produced and marked as Annexure R. 3. From the aforesaid government agreement it is evident that the land is needed and likely to be needed for a public purpose within the meaning of Rajasthan Land Acquisition Act, 1953. The land to be acquired will be allotted to Rajasthan State Industrial & Mineral Development Corporation according to Section 4 (1) of Rajasthan Land Acquisition Act, 1953. The State Government therefore issued a notification u/s 4 (1) of the Land Acquisition Act mentioning this fact that the land is needed or likely to be needed for public purpose which was published in accordance with the provisions of the Law. Since there was urgency in the matter of acquiring land, therefore the Collector proceeded to invoke Section 17 of the Rajasthan Land Acquisition Act, 1953. Since the acquisition of land was urgently necessary and the land was waste and arable land the Government of Rajasthan issued notification by Industries (Gr. 1) Department dated August 23, 1976 u/s 17 (4) of the Act. This was published in the Rajasthan Gazette, Extra Ordinary dated August 23, 1976 Part-1 K that the possession of land be taken after 15 days of the publication of the notification. The copy of this notification is marked as Ann. R-4. The Collector caused to be published notices to be given at the convenient place stating that the State Government intended to take possession of the land and that claimants to compensation for all interested in such lands may be made to him, in accordance with Section 9 (1) of the Rajasthan Land Acquisition Act, 1953.

After the publication of the aforesaid notification u/s 17 (4) the compliance was made in accordance with the directive given in the notification and also in accordance with the provisions of Section 17 of the aforesaid Act."

32. Apart from the above, I find that a copy of the lease-deed has been filed which is Annexure R. 3, and is a printed form with blank columns.

33. It was pointed out that in 1974, an agreement was entered into between the State of Rajasthan and the R. I. M. D. C., on the basis of which State was required to make available land to the R. I. M. D. C. for the industrial development. This agreement has been filed in writ Pet. No. 19/78; Laxmichand v. State of Rajasthan and Ors.; and is Annexure R. 3, dated 14-3-1974. The object of this R. I. M. D. C., as mentioned in this agreement, is to promote and

develop the industries in the State of Rajasthan. There are only three clauses in this agreement which are in the following terms:

"1. That the Government shall provide land out of Government land wherever available as well as by acquiring the private land and shall transfer the same to the Company on such terms and conditions as may be specified by the Government.

2. That the Company shall pay to the Government or such person or persons as the Govt. may specify on its behalf all such sums of money as may be awarded under the provisions of the Rajasthan Land Acquisition Act, 1953, as compensation to such person or persons who may be found, on enquiry held under the provisions thereof, to be interested in the said land.

3. That the Company shall pay to the Government all such other expenses as may be incidental to the acquisition of the said land under the provisions of the said Act."

34. The above clauses would show that the Government undertook to provide either by transferring the Government land and/or acquiring private land and the Company was to pay to the Government such sums of money as awarded under the provisions of the Rajasthan Land Acquisition Act, 1953, as compensation, in addition to the other expenses as may be incidental.

35. The crucial notification, by which inquiry u/s 5-A has been dispensed with and the provisions of Section 17 (4) of the Act have been invoked, is notification dated 23rd Aug. 1976 (Annexure R. 4).

36. A careful study of the above notification points out the following specific factors of it:--

(a) that the State Government, is satisfied that the land is to be acquired for public purpose i.e. the R. I. M. D. C.

(b) that a notification u/s 4 has already been issued;

(c) that the acquisition of the land is very necessary;

(d) that, therefore, the provisions of Section 17 (4) of the Act are invoked and procedure of Section 5-A of the Act would not apply.

37. The above notification is conspicuously silent on the point that the land sought to be acquired, is waste and arable land.

38. The comprehensive study of all the above documents would go to show that the State Govt. wants to acquire the land for the purpose of providing it to the R. I. M. D. C., as per its duty in the agreement of 1974. The first notification mentioned that it was required for the purposes of an Oxygen Company but that notification was amended by issue of a corrigendum.

39. Apart from the above facts and circumstances pleadings of the parties are

conspicuously silent for the specific urgency, need of acquisition.

40. Mr. Khan's contention is that not only urgency is not justiciable and not subject to the judicial review, as held by the Rajasthan High Court but further this Court cannot probe into the material which was placed before the Government for its satisfaction of the urgency because that satisfaction is subjective. It was argued that not only this Court in the case mentioned above, but other High Courts have also held that the fact of urgency for the purposes of Section 17 (4) is not subject to judicial review under Article 226 of the Constitution of India. For the above prepositions, Mr. Khan invited my attention to the following authorities:

(i) Sohan Lal Bansal Vs. Arjunmal Dudani and Another, ; (ii) Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another, ; (iii) Jage Ram and Others Vs. State of Haryana and Others, ; (iv) Mansoor Khan and Others Vs. State of U.P. and Others, ; (v) Jage Ram and Others Vs. State of Haryana and Others, ; (vi) Smt. Kailashwati Vs. State of U.P. and Another, .

41. Mr. Jain, appearing for the petitioners, placed reliance upon the judgment of Hon"ble the Supreme Court in Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, and Dora Phalauli Vs. State of Punjab and Others, and the latest judgment of the Bombay High Court in Yesho Nathu Mahajan and Another Vs. The State of Maharashtra and Others, . The decision of the Bombay High Court in Yesho Nathu's case (supra) is again based on the judgment of the Supreme Court in Nara- yan's case (supra), and which has been extracted in para No. 7.

42. I have carefully considered the rival contentions of the learned counsel for the parties and the principles of law as enunciated in the above cases.

43. Mr. Jain, learned Advocate for the petitioners, further invited my attention to the following authorities:

(i) Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; (ii) AIR 1970 SC 2066 ; (iii) Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, ; (iv) The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, ; (v) A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, ; (vi) Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, ; (vii) Tata Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another, ; (viii) Rajasthan Udyog Vs. State of Rajasthan and Others, ; (ix) Birma Ram Vs. State of Rajasthan, ; (x) State of Gujarat and Another Vs. Bhogilal Keshavlal and Another, ; (xi) Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others, ; (xii) Sadruddin Suleman Jhaveri Vs. J.H. Patwardhan and Others, ; (xiii) Dora Phalauli Vs. State of Punjab and Others, ; (xiv) Shyam Sunder Azad Vs. Transport Appellate Tribunal, Rajasthan, Jaipur and Others, .

44. On a closed scrutiny of these judgments I am of the opinion that so far as the present case is concerned, it is squarely covered by the judgment of the Supreme Court in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, . It is so because in the instant bunch of cases, the land is being acquired for the industrial Development by the R. I. M. D. C. and so also in the case of the Supreme Court, purpose of acquisition was for industrial development and residential purpose. Thus, it is obvious that the acquisition in both the cases, i.e. instant bunch of cases as well as Supreme Court's case was for industrial development. Although earlier in the beginning of the submissions, there was some obscurity and confusion about the exact purpose even in relation to the industrial development because at one stage, notification was issued for an Oxygen Company and later on, during the arguments, reference was made to some Paper Mill by the respondent's counsel and so also, the petitioners' counsel pointed out towards some applications of the Oxygen Company for becoming party and the order of the Court which was never carried out by the petitioners, themselves, but in the net analysis, at the conclusion of the arguments, it was realised by all concerned including the learned counsel for the parties that the purpose of the acquisition in the instant cages, is for providing land to the R. I. M. D. C. which in its term would allot the land for the purposes of the installation of the various industries as and when the same is demanded by the industrialists. That being so, all the earlier controversies having been settled the basic and fundamental bed-rock of this acquisition in these bunch of cases, is for industrial development of Rajasthan through the R. I. M. D. C. In Narayan's case, before the Supreme .Court, the purpose notified was the development of an area for industrial and residential purposes.

45. Mr. Khan, learned Government Advocate invited my attention to the various clauses of lease deed and the agreement and some averments in the reply to point out that the rapid industrial development was contemplated and he wanted to build structure of urgency on the use of the word, "rapid" mentioned in a printed blank form of lease deed filed in writ petition No. 472/77 Motiyan and others v. State and Ors., by the State-respondent. This lease deed (Annexure R. 3) is printed form which was got printed in pursuance of the resolution No. 21 dated 27-2-1974 and this only shows the object of formation of the Company, it has got no relevancy with the present acquisition an such. Mr. Ashopa, learned Advocate for the petitioners, in reply to it, pointed out that, in notice u/s 9 respondent have mentioned that the land is being acquired for the development of the Chambal Project. Learned Advocate for Respondents in reply to this, has pointed out that printed forms were used by the Land Acquisition Officer's office for acquisition and while doing so, the forms meant for Chambal Project development acquisition, were used for the industrial development acquisition. It is not necessary to probe further into this matter because the least which can be said, is that both the forms pointed out by the petitioner, as well as the respondents, and used by the Land Acquisition Officer's office indiscriminately, prove that the acquisition proceedings are being taken in a mechanical manner

by the Land Acquisition Officer, without application of the mind

46. In *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, Hon''ble the Supreme Court took the view that such schemes of industrialisation, generally, take sufficient period of time to enable at least summary inquiries u/s 5-A of the Act to be completed without any impediment whatsoever to the execution of the scheme. It was further held that 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 5-A of the Act. The above weighty observations of Hon''ble the Supreme Court clinches the issues so far as this bunch of cases is concerned. There is no escape from the obvious position, almost undisputed in these cases that notification under Sections 4 and 6 of the Act makes it clear that the land is being acquired for the R. I. M. D. C. The other facts which have come from the side of the respondents clearly prove that after the R. I. M. D. C. takes over the land by acquisition, it would make further allotment to the various industrialists for the industrial development. The fact that the Corporation was formed in 1974 and the development of Rajasthan is in continuous process which can take decades and decades together is writ large on the very nature of development plans and schemes. No country and muchless the State like Rajasthan can have industrial development overnight.

47. As is well known, industrial development of a State required manifold resources, viz., capital, land, raw material, availability of power and water, and labour etc. Industrial development, which is a part of economic development, is even in continuous process. That being so, it cannot be equated with the category of the illustrative cases given by Hon''ble the Supreme Court like river changing its course; or other illustrative cases given by the Bombay High Court in *Yesbo Nathu Mahajan and Another Vs. The State of Maharashtra and Others*, , like urgent needs created due to earthquake or flood or some specific clear cut time-bound project likely to be rendered ipso facto nugatory and infructuous by even such lapse of time as would occur in the case of an acquisition without the urgency clause. In the case of *Yesbo Nathu* (Bombay High Court) (supra) acquisition was being made for providing the house to the homeless persons. The Court held that the purpose was very laudable but by that account, application of urgency clause so as to obviate even the minimal requirement of a hearing, cannot be spelled out.

48. It may be pointed out that the submission of Mr. Khan, that the subjective satisfaction of the urgency cannot be challenged and is outside judicial review, was also dealt with and considered by the Bombay High Court relying upon its earlier Judgment of *Narayan v. State of Maharashtra* 197 Bom LR 872 , which was upheld by Hon''ble the Supreme Court in the above case of *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, . In Para. 10, Bombay High Court (*Yesbo Nathu*'s case) extracted the portion of the Supreme Court's judgment of *Narayan*'s case (supra) which is as under:

"..... When the existence of circumstances on which an opinion has been arrived at has to be proved at least prima facie, it would not be sufficient for the authority which arrived at that opinion to assert that circumstances existed but give no clue whatever as to what such circumstances were....."

".....the burden of proving such circumstances, at least prima facie, is on the respondents. As the respondents have brought no relevant material on the record, the respondents have failed to discharge the burden. We must, in conclusion, hold that the urgency provision u/s 17 (4) was not validly, resorted to."

49. The Bombay High Court then commented upon the above portion of the Judgment in the following terms:

"same, indeed, is the position in the present case. The quest and search for circumstances in support of the urgency clause has been a dismal failure. The ex post facto research in that field has here been akin to chasing a shadow devoid of reality. The clause in question, has fallen into a melting point."

50. Now, in the light of the above legal position, if the urgency clause, data is examined in the present bunch of cases, it would exercise of futility. As mentioned above, respondent No. 2 in reply to Para. 12-H of writ, has avoided the issue, instead of meeting it squarely. In reply to para Nos. 1 and 2 of the writ, respondents have not placed any date or material or facts worth the name which could have provided some material for consideration on this issue. That being so, I am inclined to hold that the situation which arose in Yesho Nathu Mahajan and Another Vs. The State of Maharashtra and Others, of Bombay High Court, referred to above, has been repeated here also. As held in Yesho Nathu's case (supra), the quest and search for circumstances in support of the urgency clause has been a dismal failure. The ex post facto research in that field has here been akin to chasing a shadow devoid of reality. The clause in question has fallen into a melting point. The above observations of the Bombay High Court amply apply to this bunch of cases. Relying upon the doctrine of subjective satisfaction and claiming immunity from judicial review, respondents have not taken pains to even place broad facts to prima facie convince this Court that there was urgency.

51. Mr. Khan, learned Government Advocate placed reliance upon the judgment of the Supreme Court in Ishwarlal Girdharilal Joshi etc. Vs. State of Gujarat and Another, , but these again, it has to be observed that the implications of the observations made in Ishwarlal Girdharilal Joshi's case (supra) have already been considered and commented upon in details in Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, . In Para. 36 of Narayan's judgment Hon'ble the Supreme Court has observed that in I.G. Joshi's case (supra) it appears to us that the principal ground of attack on a notification was that it was not duly authenticated in accordance with the requirements of Article 166 and the Rules of Business. The notification was held not to have been vitiated on the grounds on which it had been assailed. It was observed that the High Court after

considering the evidence, was satisfied, on the evidence produced before it, that the required opinion had been formed even though it was not necessary for the Government, in view of the presumption of regularity attached to official acts, to produce anything more than the notification. We do not find that any of the matters placed before us now was in issue there.

52. Hon^{ble} the Supreme Court, after commenting on the implications of the principles laid down in *Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another*, held as under:--

"We think that such a question can only be decided rightly after determining what was the nature of compliance with the conditions of Section 17 (4) required by the Act."

53. In Para. 38, Hon^{ble} the Supreme Court making weighty observations held that the mind of the Officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings u/s 5-A of the Act should be eliminated. The Court then clinched the issue by making weighty pronouncements in the following words:--

"It is not just existence of an urgency but the need to dispense with an inquiry u/s 5-A which has to be considered."

54. It would thus be seen that the Supreme Court has provided new dimensions to the basic compliance of the requirements of Section 17 (4) of the Act because it has held that mere urgency is not enough but it must be of such a nature that there is need to dispense with an inquiry u/s 5-A of the Act. The Court did not leave the matter there but in Para. 39, in order to emphasise the point, gave illustrations of sudden change of course of river leaving no option if essential communications have to be maintained for the use of urgency clause. It held that such a situation results in more or less, indicating, by an operation of natural physical forces beyond human control, that land should be urgently taken possession of.

55. Even after enunciating the principle in such emphatic, clear and unambiguous terms, Hon^{ble} the Supreme Court took pains further to discuss the principles of burden of proof in these cases, in order to remove obscurity, if any in this branch of law and observed in a very unambiguous language, which I have already extracted and reproduced in earlier part of my judgment.

56. It would thus be seen that the cases of exceptional nature, where urgency warrants dispensing with the requirements of application u/s 5-A of the Act, have been carved out in a special category by the Supreme Court, and it has further been held that since in such matters, the facts are in special knowledge of the respondent i.e. the State Government, it is their legal duty to place the same before the Court. In other words, it has not approved abstract doctrine of presumption of correctness flowing from by mere use of word, "urgency" and further has also repelled the statement of State that the question of judicial

review cannot arise.

57. In that view of the matter, question arises whether I am still bound to follow the judgment of this Court in *Gopal Singh and Another Vs. State of Rajasthan and Another*, wherein according to Mr. Jain, this Court held that the question of urgency contemplated by Section 17 (4) of the Act is beyond judicial review.

58. To be precise, it should not be forgotten that Division Bench of this Court even while making observations, much capital of which is sought to be made by Mr. Khan, added word of caution in Para 21 as reproduced earlier, where it was observed as under:

"The Land Acquisition Act, no doubt, enables the Govt, to acquire their property if it is needed for purposes mentioned therein, but it is extremely necessary that the provisions of this Act should be strictly followed. Normally, every person, who has interest in the land, which is sought to be acquired, should have a notice of the notification which is issued u/s 4 (1), so that he is able to file his objection, if there be any."

59. While making the above observations, the Court said, "the question of urgency may not be justiciable, but the powers must be used only when there is urgency and they should not be used just to cover up the deficiencies, if any, left out by officers concerned u/s 4 (1) or Section 5-A of the Act." It may be pointed out that this Court, while quashing the acquisition proceedings, made above observations and all that was said, was that the question of urgency may not be justiciable. It should not be forgotten that the entire argument of urgency was based on the translation of word 'अवश्य' and it was in that context that the Court in Para. 20 observed that this matter whether an urgency exists or not, is a matter for the determination of the Government and it is not a matter for judicial review. This observation was based on the decision of Madras and Madhya Pradesh High Courts, referred therein. On a reading of Para 20 and Para. 21 together, it may safely be inferred that the Division Bench of this Court was of the view that the matter of urgency is not justiciable. This view of this Court cannot be treated as good law after the authoritative pronouncements of Hon'ble the Supreme Court in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, .

60. The question, which requires consideration now, is whether sitting in single bench, this Court should make reference to a larger bench or it is within its competence not to follow the principles laid down by the Division Bench of this Court, on account of the pronouncement of Hon'ble the Supreme Court.

61. In *Sachindra Nath Mukherji Vs. The State of West-Bengal and Others*, , *Hutchappa Thimmagowda v. Dyavamma* AIR 1954 Mys 93 ; *Rishi Kesh Singh and Others Vs. The State, New Krishna Bhavan, Malleswaram Bangalore v. Commercial Tax Officer, No. IV Circle (Addl.) Bangalore* AIR 1961 Mys 3, it has been repeatedly held that in case of clear pronouncement of Hon'ble the Supreme Court, single bench of High Court is not bound to follow the judgment

of a Division Bench of that Court, which cannot be treated as good law.

62. In *Kayum AH v. Kana* 1971 RLW 323 this Court had occasion to consider such a situation in Para. 6 at p- 325. It was observed as under:--

"A contrary view taken in the matter is supported by the following observations of the Supreme Court in *K.K. Pockounju v. K.K. Ramakrishna Pillai*, Criminal Appeal No. 29 of 1968, decided on December 2, 1968 reported in Ker LT 50 (SC)."

The only point of any substance which has been pressed before us by the learned counsel for the appellants is that the Rules framed under the Act had not been complied with in as much as it has been proved that the specimen impression of the seal used had been sent to the Public Analyst. Rule 18 of the Prevention of Food Adulteration Rules, 1955 provides that a copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the public Analyst separately by post. The High Court was not at all impressed with the contention based on Rule 18. It relied upon the report of the Public Analyst Ex. P. 9 which was in Form III as prescribed by the Rules in which it was stated, inter alia, that the Public Analyst had received from the Food Inspector as a sample of compounded misky asafoetida marked No. C2/65 for analysis, properly sealed and packed and that he had found the seal intact and unbroken. The contention which was pressed and which has been reiterated before us is that it is nowhere stated in Exh. p. 9 that the Public Analyst had compared the specimen impression of the seal with the seal on the packet of the sample. The High Court relied on the principle that official acts must be presumed to have been regularly performed. Under Rule 7, the Public Analyst has to compare the seal on the container and the outer cover with the specimen impression received separately on receipt of the packet containing the sample for the analysis. The High Court considered that it must have to be presumed that the Public Analyst acted in accordance with the Rules and he must have compared the specimen impression received by him with the seal of the container. We do not find any error in the decision of the High Court on the above point." The principle laid down by their Lordships of the Supreme Court, by virtue of Article 141 of the Constitution, is binding on this Court and has to be followed, even though there may be a contrary decision of this Court."

63. This Court was considering the question about the principle embodied in illustration (e) to Section 114, Evidence Act in relation to the regular performance under the Prevention of Food Adulteration Act and the formalities required thereunder.

64. In *State of Rajasthan Vs. Kapoor Chand*, strict compliance of the Rules 7 and 18 was insisted upon and they were held to be mandatory. However, a contrary view was taken by the Supreme Court. Confronted with the above situation Justice Mehta, as he then was, has held that by virtue of Article 141 of the Constitution of India, Principle laid down by their Lordships of the Supreme Court

is binding on this Court and has to be followed, even though there may be a contrary decision of this Court.

65. It hardly requires any discussion, debate or dialogue on this branch of law because the founding fathers of the Constitution never left any doubt about the weight to be given to the pronouncement of the Supreme Court. Article 141 was enacted precisely for making this position patent and clear that the law laid down by the Supreme Court would be law of the land. Article 141 reads as under:

"141. Law declared by Supreme Court to be binding on all courts:-- The law declared by the Supreme Court shall be binding on all courts within the territory of India."

66. In view of this, with due respect to the view taken by the Division Bench of this Court in the above case, I have got no hesitation in holding that the question regarding the urgency u/s 17 (14) of the Act, is not immune from judicial review and once it is challenged properly, this Court has ample jurisdiction to make limited probe into the matter as per limits set out by the Supreme Court in the above case. In fact, in the present bunch of cases, no probe even is required because the only requirement of acquisition is industrial development and that too for providing land first to the corporation (R. I. M. D. C.), which itself in terms would allot the land, later on, to industrialist as and when the same is required to be done. Such a nature of requirement simpliciter without anything more live like time bound programme, can never be treated as enough for dispensing with and depriving a citizen of his legal right of a summary inquiry u/s 5-A of the Act. This is a sort of right of hearing, which has been put at the highest pedestal on the principles at natural justice, in the various cases of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another, . I*" have got no hesitation in holding that invoking of urgency clause u/s 17 (4) of the Act was wholly misconceived and cannot be sustained.

67. Mr. Khan, learned Government Advocate, submitted that the power of judicial review in a challenge to urgency contemplated by Section 17 (4) of the Act is not subject to judicial review except to the following conditions:

- (i) that the exercise of power mala fide;
- (ii) that the exercise of the power on an extraneous matter;
- (iii) that the exercise of the power without existence of the same;
- (iv) that colourable exercise of the power. Assuming, the above to be correct, the present case falls in categories (ii) and (iii).

68. In view of my above findings, it is not necessary to enter into and adjudicate the other controversies raised by Mr. Jain, learned counsel for the petitioners, because once the petitioner is allowed an opportunity of hearing for objections, u/s 5-A of the Act, it would be open to them to raise all permissible objections and

got adjudication from the competent authority.

69. The result is that all these writ petitions are accepted. Notification dated 30th July, 1976 (Annexure 1), u/s 4 of the Act, is upheld but the notification u/s 6 of the Act and all further proceedings in consequence of notification u/s 6, invoking Section 17 (4) of the Act dated 23rd August, 1976 are quashed. The lands in question are already in possession of the petitioners. It would be open to the respondents to take afresh proceedings by following the procedure prescribed u/s 5-A of the Act. It is further made clear that in case, any extraordinary exceptional situation of urgency as contemplated by the above judgment of Narain's case (supra) of the Supreme Court, arises in future, the respondents would be at liberty to invoke the powers u/s 17 (4) of the Act also. Parties would bear their own costs.