
(2009) 11 AHC CK 0246
In the Allahabad High Court

Nand Kishore Gupta and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-11-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 5A

Citation : (2010) 2 AWC 2137

Hon'ble Judges : Virendra Singh, J;Sunil Ambwani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Virendra Singh, JJ.—In all these connected writ petitions the petitioners have prayed for quashing the notifications u/s 4, with the opinion of the State Government of urgency u/s 17(1), and directions u/s 17(4) of the Land Acquisition Act, 1894 (the Act); and the notification u/s 6(1) of the Act, for Yamuna Expressway Project, and construction of Interchange under the Yamuna Expressway Project in district Agra, Aligarh and Mathura through "Yamuna Expressway Industrial Development Authority (Y.E.I.D.A.). The petitioners have also prayed for directions not to give effect to the notifications, and to dispossess them after demolishing their constructions.

2. Heard Shri B.D. Mandhyan, senior advocate assisted by Shri Sanjiv Kumar, Shri P.C. Jhingan. Smt. Sarita Shukla for the petitioners. Shri Satish Chaturvedi, Additional Advocate General assisted by Shri M.C. Chaturvedi, Chief Standing Counsel and Shri M.C. Tripathi, Addl. Chief Standing Counsel appear for State respondents. Shri Navin Sinha, senior advocate assisted by Shri Yashwant Verma appear for M/s. Jaiprakash Infratech Ltd. Shri Ramendra Pratap Singh appears for "Yamuna Expressway Industrial Development Authority".

3. The parties have exchanged affidavits. The Addl. Advocate General has produced the material on which the State Government recorded its satisfaction of invoking Section 17(4) of the Act, for dispensing the enquiry u/s 5A of the Act.

4. The State Government took a decision for construction of Taj Expressway in the year 2001 towards east of Yamuna from New Okhla Industrial Development Authority (N.O.I.D.A.) to Agra, and invited bids from interested parties for the project in the year 2003. The bid document was issued by the Taj Expressway Authority (T.E.A.), now named as "Yamuna Expressway Industrial Development Authority" vide Notification dated 11.7.2008, setting up terms and conditions on which the contract was to be awarded. Para 1.1 relevant to introduction of the concept and the purpose of the project is quoted as below:

The absence of a major highway on the eastern side of Yamuna in U.P. is resulting in longer travel time as well as inconvenience to road users. Considering this, U.P. Government is contemplating to provide an access-controlled expressway connecting New Delhi with Mathura and further Agra. The objectives of the proposed expressway are as follows:

- (i) Provide a fast moving corridor to minimize the travel time;
- (ii) To connect the main townships/commercial centres on the eastern side of Yamuna; and
- (iii) To relieve NH2 which is already congested and runs through the heart of cities like Faridabad, Ballabgarh and Palwal.

5. The project included building of six lane highway to run over 160 kms. The project was offered as a Joint Venture (J.V.) in which a Special Purpose Vehicle (S.P.V.) company was to be floated; alternatively bidder could take the project exclusively. The company undertaking the project was to put the entire money for the project with the rights to collect toll charges for a period of 36 years, on the rates to be notified by the State Government, under a "Built Operate and Transfer" (B.O.T.) Scheme. To compensate the company undertaking the project a provision was made to have at five different places, each one of which is to be in N.O.I.D.A. or Greater N.O.I.D.A. subject to availability, 5 million sq. mtrs. of land along the expressway for commercial, amusement, industrial, institutional and residential complexes to be offered on lease for a period of 90 years on the acquisition cost. The entire cost of acquisition was to be paid by the company undertaking the project.

6. M/s. Jaiprakash Infratech Ltd. was shortlisted alongwith one another company, and was awarded contract, after extensive bidding and negotiations. The project ran into difficulties initially raising public issues of acquisition of land for the purposes of a public limited company. A Commission of Enquiry was appointed by the State Government under the Commission of Enquiries Act, 1956, headed by Justice Siddheshwar Narain, a retired Judge of Patna/Calcutta High Court. He submitted his report on 12.10.2006. A public interest litigation-Civil Misc. Writ Petition (P.I.L.) No. 30322 of 2007 was filed directing the State to produce the report of the Commission, and to initiate denovo judicial enquiry headed by a sitting High Court Judge, and for directions to declare the enquiry report to be illegal, invalid and ineffective, A Bench of this Court presided by Hon"ble the

Chief Justice Mr. H.L. Gokhale and Hon'ble Mr. Justice Vineet Saran dismissed the writ petition by a judgment on March 14, 2008 reported in 2008 (3) ADJ 427 . The Court held that before finalising the contract the State Government or the Taj Expressway Authority (T.E.A.) had undertaken the requisite research. The State Government and the T.E.A. had entered into various correspondence and examined all aspects of the matter, before issuing bid documents inviting the offers. The Commission had gone into all these documents and had found the allegations of malice to be baseless. The tenders were invited, in various national dailies, to which many companies responded and ultimately only two were left in fray. The entire process was transparent. There was good deal of deliberations and considerations before granting final approval. The recommendations of the Commission were scrutinized by the Finance and Law Department and were found to be in order. The cost of land acquisition has to be borne by the Company, and the toll charges were to be determined by the State Government. The contract was not to grant any favour to the company. The Court also rejected the contention that the concession on payment of stamp duty was mala fide. The exemption was granted with a view to promote large projects having capital investment of Rs. 750 crores or more, . to be given effect from 13th February, 2003.

7. The State Government, thereafter, issued various notifications acquiring the land in the districts of Gautam Buddh Nagar, Mathura, Aligarh, Maha Maya Nagar (Hathras) and Agra for the purposes of construction of expressway. The notifications under Sections 4 and 6 of the Act dated 15.10.2007 and 4.1.2008 acquiring land situate in village Korab Tehsil Mahaban, district Mathura came up for consideration in Balbir Singh and Anr. v. State of U.P. and Ors., Writ Petition No. 48978 of 2008, on the grounds that the actual purpose of acquisition is for the benefit of a company and therefore the provisions of Section 5A of the Land Acquisition Act, were wrongly dispensed with and the provisions of Section 17(4) of the Act have been illegally invoked. The acquisition of the land for company should have been drawn in accordance with the provisions of the Part VII "Acquisition of Land for Companies", of the Act read with the provisions of the Land Acquisition for Companies Rules, 1963. The entire cost of the acquisition was to be borne by the company for which the company has deposited a premium amount of Rs. 151,42,03,407 and has been given liberty to utilize/use part of land for various facilities. For all practical purposes the acquisition is for the benefit of the company and that the name of public purpose is just a camouflage, The compensation award is to be paid from out of funds of the company and not from public revenue or the funds controlled/managed by the local authority.

8. By a judgment dated 5.10.2009 the Court dismissed the writ petition with the findings that the project was not conceived by the company, nor the company gave any application for acquisition of land under Rule 4 of the Rules. The company was not even in existence, when the project was prepared by the State Government. The acquisition is for construction of expressway, which is

otherwise for the benefit of the public at large. There is tremendous growth in the population and that the roads and other facilities available to the public are seriously lacking. In order to provide infrastructural facilities for developing industries throughout the Yamuna belt, the project of national importance was taken up connecting various cities of Uttar Pradesh to the national capital. The Jaiprakash Associates Ltd. was shortlisted to execute the project within stipulated time. The acquisition is thus clearly for public purpose. Relying upon *Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others*, ; *Amarnath Ashram Trust Society and Another Vs. Governor of U.P. and Others*, and other cases, the Division Bench held after going through the various clauses of the lease deed that the entire cost of acquisition, or any dues is to be paid by the respondent company, on ready basis. The payment of acquisition cost in terms of the provisions of concession agreement was the payment made to the authority, and that became the fund of the authority, which is public revenue from which compensation was to be disbursed to the land holders. The compensation was to be paid by the authority on its discretion and control. The payment of compensation, therefore, was wholly or partly out of fund controlled and managed by the authority. The Division Bench further held in *Balbir Singh's* case (supra) that out of total area of 1638 hect. of the expressway in 133 villages affecting 12315 farmers, 11387 farmers have received compensation and that only 142 farmers out of such a large number of village Karab have raised the issues, leaving only 139 farmers, who have not taken compensation. In the end the Court held that private interest is always affected to some extent in such large scheme requiring acquisition of land. The development of infrastructure to meet the growing needs has to make on some sacrifice. A holistic view has to be taken to look for an all round development without forgetting about our heritage, culture and traditions.

9. In this third round of litigation now the farmers of Mathura and Agra have challenged the acquisition of land for construction of Expressway and for Interchange of Expressway, mainly on the ground that there was no urgency much less any special urgency, for construction of road, to acquire fertile agricultural land. In Writ Petition No. 31314 of 2009 the land situate in plot Nos. 88M, 120, 122M, 123, 124, 129M, 130M, 131M, 138M, 139M and 140M belonging to the petitioner Nand Kishore Gupta and Ors. is under challenge. It is stated in para 5 of the writ petition that the petitioners are the owners of the land since long with their names mutated in the revenue records. They have raised constructions and that part of land is being used for business, after declaration as abadi. There is a cold storage of petitioner No. 1, and shops in cold storage, a temple in plot No. 139, weigh bridge, (dharm kanta) on plot No. 122 and that plot Nos. 129M and 130M are owned by Trishul Sahkari Awas Samiti represented by Shri Shyam Lal Gupta. The total area of each of the plot except plot No. 131M is less than 1 hect. The plot No. 131M covers an area of 1.3299 hect.

10. In Writ Petition No. 50474 of 2009, Rajo Devi and eight others v. State of

U.P., the details of abadi land have been given in para 5. It is stated that the petitioners have a house at a portion of the land with four rooms and boundary wall on Khasra Nos. 3789 and 3788, and abadi on the portion of khasra No. 3789 of Madhu Devi and abadi on a portion of plot No. 3789 of Smt. Seema Devi. In para 32 of the counter-affidavit of Y.E.I.D.A. the allegations have been denied with further statement that no documentary evidence has been given of the constructions and in para 33 it is stated that detailed plot to plot inspection was made by the revenue authorities. There was no construction found on the land except a tube well and one room for dairy on khasra No. 3789 and boundary wall on plot No. 3288, one boring, one room and brick kiln was found on plot No. 2308.

11. In Writ Petition No. 35090 of 2009, J.S. Horticulture Pvt. Ltd. v. State of U.P., it is stated that the company has raised 10" x 11" high boundary wall in 1997 and constructed rooms inside a "goshala" has been raised on the land with 3 tube wells, power connection and that there are several trees. In para 32 the allegations have been denied and it is stated that in plot No. 239 in the name of petitioner company 42 trees and one chatari and boundary wall were found. There was no residential activity on the plot.

12. In Writ Petition No. 51537 of 2009, Bhupendra Singh and Ors. v. State of U.P. and Ors., it is stated in paragraphs 3 and 4 that the petitioners are owner/bhumidhar of arazi No. 604, area 4-1/2 bigha in village Deewana Kalan, Tehsil Manth, district Mathura. The petitioners are cultivating the land and are living from the earnings by selling agricultural produce.

13. In Writ Petition No. 51543 of 2009, Mukesh Singh alias Tek Singh v. State of U.P. and Ors., it is stated that the petitioner is owner/bhumidhar of arazi No. 616, area 3 1/4 bigha in village Deewana Kalan, Tehsil Manth, district Mathura and is earning his livelihood by cultivating the land and selling the agricultural produce.

14. In Writ Petition No. 51546 of 2009, Vijay Singh and Anr. v. State of U.P. and Ors., it is stated in paragraphs 3 and 4 that the petitioners are owner/bhumidhar of arazi Nos. 608 and 610 area 3-1/2 bigha in village Deewana Kalan, Tehsil Manth, district Mathura. The petitioners are cultivating the land and are living from the earnings by selling agricultural produce.

15. In Writ Petition No. 51551 of 2009, Jagvir Singh and Ors. v. State of U.P. and Ors., it is stated that the petitioners are owner/bhumidhar of arazi Nos. 608 and 610 area 0.7900 and 4.2963 hectares respectively in village Deewana Kalan, Tehsil Manth, district Mathura. The petitioners are cultivating the land and are living from the earnings by selling agricultural produce.

16. In Writ Petition No. 60587 of 2009, Kadival Infrastructure Pvt Ltd. and Anr. v. State of U.P. and Ors., it is stated that the petitioner is a Private Limited Company and had purchased seven plots detailed in paragraph 5 with a total area 24060 square metres by sale deeds. The dates on which the property was purchased, is not given in the writ petition. In paragraph 5 of the writ petition, it

is stated in column 6 that the plots are for industrial purposes and that the plot of Yashoda Devi wife of Sri Vijendra Kumar is a fertile land capable of growing crops. The allegations of constructions and industrial use have been denied in paragraph 33 of the counter-affidavit of Y.E.I.D.A. In the inspections no construction was found on these plots. There was a tube well, a room and some trees on plot No. 3774M and a tube well and one room for dairy in plot No. 3779.

17. The writ petitions have been filed on the grounds that the notifications under Sections 4 and 6 of the Act have been issued under colourable exercise of power. There was no urgency, no project has been specified and that the notifications are vague. The action of the Government in dispensing with enquiry u/s 5A of the Act is mala fide. There was no urgency to take away the valuable right of raising objections to the acquisition u/s 5A of the Act. It is mandatory u/s 17(3A) of the Act to provide 80% compensation of the estimated amount before taking possession, whereas notification u/s 6 of the Act makes it imperative to take possession after 15 days of issuing notification. The provisions of Section 17(3A) of the Act have thus been violated. It is further alleged that the construction of interchange under the Yamuna Expressway Project was not necessary to acquire the land. The interchange also involves land of railways on plot No. 131, which is a vast area but that no permission was taken from railways, which had also acquired the land. The initial land in plot No. 131 measuring 1.1020 hecets. was proposed to be acquired but that notification u/s 4 of the Act included 1.3292 hecets. The notifications are thus invalid and are liable to be quashed.

18. In the counter-affidavit of Shri Vinod Kumar Singh, A.D.M., Land Acquisition, Agra it is stated that the State Government for the development of certain areas in the State and for making industrial and urban development issued notifications dated 24.4.2001 u/s 3 of the U.P. Industrial Area Development Act, 1976 constituting "Taj Expressway Industrial Development Authority". The name of the authority was changed to "Yamuna Expressway Industrial Development Authority" (Y.E.I.D.A.) vide notification dated 11.7.2008. Initially three villages in district Agra were notified for planned industrial development. By subsequent notification more villages in five districts of district Gautam Buddh Nagar, Aligarh, Agra, Mathura and Maha Maya Nagar (Hathras) were included. The Y.E.I.D.A. is authorized to perform various functions to secure planned development of the area including allocation and transfer by way of sale or lease or otherwise, the plots of the land for industrial, commercial, residential and other purposes. The authority enjoys powers to sell, lease or transfer the land u/s 7 of the U.P. Industrial Area Development Act, 1976. The Taj Expressway Project conceived by the State Government in 2001 is an integrated project involving construction of Excess Controlled Expressway stretching over 160 kms. from N.O.I.D.A. to Agra and for development of 25 million sq. mtrs. of land alongwith the expressway. The bids initially received in pursuance to advertisement dated 23.5.2001, were rejected and the matter was considered by the Cabinet afresh in November, 2002. The bidding process was completed -and a Concession Agreement dated 7.2.2003 was executed in favour of the selected bidder Jaiprakash Industries

Ltd., to construct the expressway and to develop the land alongwith said expressway on B.O.T. basis. The cost of construction of the excess control expressway was to be borne by the successful bidder. The schedule for release of land for expressway and land for development was provided in the concession agreement. The validity of the project was challenged in public interest litigation. The State Government exercising power under Commission of Enquiries Act appointed Justice Sidheshwar Narain Commission. The Writ Petition No. 40074 of 2003 initially filed was dismissed as infructuous on 21.11.2007 and Writ Petition No. 30322 of 2007 was ultimately dismissed by final judgment and order dated 14.3.2008. In *Balbir Singh v. State of U.P.* (supra) this Court dismissed the writ petition alleging that the acquisition was for the purposes of company and thus the provisions of Chapter VII of the Act were required to be followed.

19. In reply to the allegations of mala fide and dispensing with enquiry u/s 5A it is stated in paras 20, 21, 28, 29, 30, 31 and 32 as follows:

20. That in so far as the issue of dispensation of enquiry is concerned, regard may be had to the fact that the integrated project was to cover a large area of land. In case the State Government had undertaken an enquiry into disposal of individual objections as contemplated u/s 5A of the Act, the project itself would have lost all value and efficacy. Moreover the land for development was to be acquired in accordance with the physical progress of the expressway as provided for in the concession agreement. Considering the mammoth scale of the project the State Government was also conscious of various encroachments etc. which may have arisen over the project area. It was also conscious of the fact that the project which had been conceived way back in 2001 had been unnecessarily delayed depriving the State of its benefits for the past 7-8 years and also of the date of completion, as stated and undertaken before this Hon'ble Court. It was upon a consideration of all the aforesaid factors that the State Government formed its satisfaction with regard to the exercise of power u/s 17(1) and (4) of the Act.

21. That the answering respondents submits that this Hon'ble Court while exercising the power of judicial review is not concerned with the sufficiency of material but with the issue as to whether there was material before the State Government justifying the formation of opinion in dispensing with the enquiry contemplated u/s 5A of the Act. The answering respondents submit that the reasons mentioned hereinbefore establish clearly that sufficient compelling reasons existed in justifying the action of the State Government in dispensing with the enquiry under the Act.

28. That upon completion of the relevant procedural requirements the District Magistrate, Agra vide letter dated 14.1.2009 submitted the proposal alongwith the complete relevant papers to the Director, Land Acquisition Yamuna Expressway Industrial Development Authority with a request for getting the proposal examined and thereafter forwarding the same to the State Government for issuance of notification u/s 4(1)/17 of the Land Acquisition Act, 1894

hereinafter referred to as the Act, 1894.

29. That pursuant to the aforementioned land acquisition proposal the notification u/s 4(1)/17 of the Act, 1894 was issued on 20.2.2009 by the State Government. The notification was duly published in the Gazette dated 20.2.2009 and also in two daily newspapers namely Amar Ujala and Dainik Jagaran on 27.2.2009. The aforesaid notice was also notified by means of a public notice/ munadi made on 7.3.2009. The photostat copies of the aforementioned notification u/s 4(1)/17 of the Act, 1894 dated 20.2.2009 issued by the State Government in its Gazette" publication dated 20.2.2009 and the publication in two daily newspapers.

30. That on 29.5.2009 the acquiring body, i.e. The Yamuna Expressway Industrial Development Authority deposited 70% of the estimated compensation (10% having been deposited earlier).

31. That thereafter the District Magistrate, Agra vide letter dated 4.6.2009 submitted the proposal for issuance of notification u/s 6(1)/17 of the Act, 1894, before the Director, Land Acquisition, Yamuna Expressway Industrial Development Authority with a request that the proposal may be examined, and thereafter, submitted before the State Government.

32. That subsequent thereto the notification u/s 6(1)/17 of the Act, 1894 was issued by the State Government on 15.6.2009 and on the same date the same was notified in the Gazette. The notification was published in two daily newspapers namely Amar Ujala and Dainik Jagaran on 18.6.2009 and thereafter the same was . notified by means of a public notice.

20. In the counter-affidavit of Shri Vinod Kumar Singh filed on behalf of Y.E.I.D.A. after giving the facts relating to the project and the public interest litigation filed by Ashutosh Srivastava (supra) and the judgment in Balbir Singh (supra) it is stated in paras 20, 24, 25, 26 and 37 to the invocation of urgency clause as follows :

20. That the above contention is evident from a perusal of the terms and conditions of the Concession Agreement which are being quoted hereunder:

"Concession period" means the period of 36 (thirty six) years plus any extensions thereto in accordance with the provisions of the agreement, starting from the Commercial Operations Date (C.O.D.). 2.1. the "work" shall include preparation of T.E.F.R. and Detailed Project Report (D.P.R.), arrangement of finances, design engineering, construction and operation of six-lane Expressway alongwith service roads and associated structures as per requirement, between N.O.I.D.A. and Agra in Uttar Pradesh, India except the construction of Expressway between N.O.I.D.A. and Greater N.O.I.D.A., which is already under execution jointly by N.O.I.D.A. and Greater N.O.I.D.A. and shall be completed in all respects, operated and maintained by N.O.I.D.A. and Greater N.O.I.D.A. at it own cost till the start of the concession period. This road would have provision for expansion

to 8-lane in future based on traffic volume.

2.2. The scope of work also includes operation and maintenance of the Expressway, including collection and retention of fees during the term of the concession period.

3.1. Subject to and on the terms and conditions set forth in this agreement. T.E.A. hereby undertakes to cause G.O.U.P. to grant to the concessionaire and the concessionaire hereby accepts the concession for a period of thirty six years commencing from the C.O.D. including the exclusive right, licence and authority during the subsistence of this agreement to implement the project.

3.2. Subject to and on the terms and conditions set forth in this agreement, the concession hereby granted shall oblige the concessionaire to undertake the following in accordance with the provisions of this agreement, the applicable laws and the applicable permits.

(i) to develop, design, engineer, finance, procure and construct the Expressway within the construction period ;

(ii) Upon completion of the Expressway and during the concession period to manage, operate and maintain the Expressway and regulate the use thereof by third parties ;

(iii) Demand, manage and collect appropriate fees from vehicles and persons liable to payment of fees for using the Expressway or any part thereof and refuse entry of any vehicle to the Expressway if the due fees is not paid ;

(iv) Perform and fulfil all of the concessionaire's obligations under this agreement; and

(v) Bear and pay all expenses, costs and charges incurred in the fulfilment of all the concessionaire's obligations under this agreement.

3.6. The concession period shall commence on C.O.D. and shall end on the date of expiry of period of 36 (thirty six) years plus any extensions thereto provided in accordance with the provisions of this agreement. However, in case C.O.D. is not achieved within 7 (seven) years or such extended period as may be approved by T.E.A., after signing of this agreement solely on account of concessionaires default, the concession period shall be reduced by the period of delay in achieving the C.O.D.

4.1. Land for construction of Expressway shall be provided by T.E.A. to the concessionaire, generally in a width of 10 metres along the alignment of the Expressway with additional land width, where required, for developing other facilities like Toll Plazas etc., on following terms and conditions.

(a) The land for construction of Expressway shall be released as per following stage :

Stage-1- Land for Phase 1 of Expressway within 6 (six) months of finalization of

alignment of the Expressway.

Stage-2- Land for Phase 2 of Expressway within 12 (twelve) months of finalization of alignment of the Expressway.

Stage-3- Land for Phase 3 of Expressway within 18 (eighteen) months of finalization of alignment of the Expressway.

(b) The land shall be leased for a period starting from the date of transfer till the end of the concession through such lease deed as may be mutually agreed between the parties.

(c) The land shall be free from encumbrances.

(d) The sole premium of the transferred land shall be equivalent to the acquisition cost plus a lease rent of Rs. 100 (Rupees one hundred) only per hectare per year. The acquisition cost shall be the actual compensation paid to the land owners without any additional charge and shall be payable by the concessionaire as per applicable rules. The lease rent shall be payable annually.

24. That the issue of dispensation" of enquiry is concerned, regard may be had to the fact that the integrated project was to cover a large area of land. Insofar as land for development is concerned it was to entail acquisition of 25 million square metres. The State Government took correct decision to invoke the urgency clause as an enquiry into disposal of individual objections as contemplated u/s 5A of the Act, the project itself would have lost all value and efficacy. Moreover, the land for development was to be acquired in accordance with the physical progress of the expressway as provided for in the concession agreement. Considering the mammoth scale of the project, the State Government was also conscious of various encroachments etc. as normally at the time of survey of a proposal are made, the people of the area encroach the land without any plan, which may delay over the project area. It was also conscious of the fact that the project which had been conceived way back in 2001 had been unnecessarily delayed depriving the State of its benefits for the past 7-8 years and also of the date of completion as stated and undertaken before this Hon'ble Court. It was upon a consideration of all the aforesaid factors that the State Government took correct decision after being subjective satisfaction with regard to the exercise of power u/s 17(1) and (4) of the Act.

25. That the answering respondents submit that this Hon'ble Court while exercising the power of judicial review is not concerned with the sufficiency of material but with the issue as to whether there was material before the State Government justifying the formation of opinion in dispensing with the enquiry contemplated u/s 5A of the Act. The State Government was subjective satisfied while examining the records and took correct decision to invoke the urgency clause.

26. That in the concession agreement, the cost of construction of the expressway was to be borne by the successful bidder and in lieu thereof the successful bidder

was to be granted rights for development of land admeasuring 25 million square metres along the proposed expressway for commercial, amusement, industrial, institutional and residential development. This land for development was to be provided at five or more locations of which one location was permitted to be in N.O.I.D.A. or Greater N.O.I.D.A. with an area of 5 million square metres.

The concession agreement further linked the transfer of land for development to physical progress of work on the expressway.

37. That the contents of paras 14, 15, 16, 17, 18, 19 and 20 of the writ petition are not admitted hence specifically denied. The construction of the road has been given to respondent No. 5 according to the concessional agreement. The project of Expressway is for public purpose. The answering respondent authority has deposited the compensation amount in the office of Special Land Acquisition Officer in the following manner mentioned in chart below:

fnukad psd@okmpj la[;k /kujkf"k Ikz;kstu 12-5-2008 185294 14]63]60484 10 izfr"kr izfrdj o 10 izfr"kr vtZu O;; 29-5-2009 475736 8]11]21]539 70 izfr"kr izfrdj /kujkf"k

The photocopy of the compensation amount deposited with the office of Special Land Acquisition Officer is being filed herewith and marked as Annexure-CA2 to this counter-affidavit.

It is submitted that the land of the petitioners are acquired for the project which is an integrated project envisaging construction of an Expressway also for development of land for commercial, amusement, industry as well as township as an integral part of the project. Since the integrated project involving the construction of an access controlled Expressway stretching that about 160 km. from N.O.I.D.A. to Agra and for development of 25 millions sq. metres. of land alongwith said Expressway was urgently required therefore urgency clause was invoked u/s 17(1) and 17(4) of the Land Acquisition Act on the report of all authorities concerned and the same was invoked after subjective satisfaction of the State Government. It is specifically stated that the ownership of the land is with the Yamuna Expressway Industrial Development Authority and the land will be given to respondent No. 5, Jay Pee Infratech Ltd. on lease. It is further submitted that no documents has been annexed by the petitioner which would have shown the status of land and for which purpose, the petitioner has purchased the land. It is open for the petitioner to collect the compensation amount according to the agreement Rules, 1997, or wait for an award which is going to be made u/s 11(1) of Land Acquisition Act. It is open for the petitioner to give the sale an exemplar to Special Land Acquisition Officer alongwith the application. At the time of making award, the same is going to be considered by the Special Land Acquisition Officer. It is specifically stated that in the notification 151 persons land has been acquired out of which 26 persons have taken the compensation amount out of 151 persons only 11 persons have filed the writ petition. It is specifically stated that the compensation amount has been

deposited by the answering respondent authority, the ownership of the remains with the answering respondent authority. The land has been given only on lease to respondent No. 5. The present acquisition is for constructions of Expressway. Moreover in a law laid down by Hon"ble Supreme Court in Sheikher Hotels Goolmohar Enclave and Anr. v. State of U.P. and Ors. 2008 (6) ADJ 307 : 2008 (4) AWC 3410 , has held that the traffic congestion is a common experience of one and all and it is very difficult to negotiate with the traffic congestion in Delhi and National Capital Region.

Hence, in the present case also, it cannot be said that the invocation of Section 5A was for ulterior purpose or was arbitrary exercise of the power. It is specifically stated that the present notifications is for the constructions of Expressway. It is specifically stated that the petitioner had not stated whose land has not been acquired which was coming in the designed map of Expressway. The allegation made by the petitioner has no legs. Moreover, in a view law laid down by Hon"ble Apex Court in First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, the Hon"ble Supreme Court has said that question of urgency u/s 17 (1) and 17 (4) of the Act, is a matter of subjective satisfaction of the State Government and ordinarily it is not open to the Court to make a scrutiny of the property of that satisfaction on an objective approval of facts. When the Government takes a decision, taking all relevant consideration into account and is satisfied that there exists urgency for invoking powers u/s 17(1) and 17(4) of the Act, and issues notifications accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors of that the decision has been given by the appropriate authority mala fide. When a mere allegations that power was exercised mala fide would not be enough and in support of such allegation specific materials should be placed before the Court. The burden of establishing mala fides is very heavy on the person who alleges it. The petitioners fail to make out the case. The ground thereunder are devoid of merit. The writ petition is liable to be dismissed.

21. In the counter-affidavit of Shri V.C. Srivastava, Addl. General Manager, J.P. Infratech Ltd. after giving the background as detailed in the affidavit filed on behalf of the State Government and Y.E.I.D.A., the current status of the acquisition of land and the number of farmers, who has accepted the compensation is given in paras 31 as follows :

31. That to update the position insofar as the land acquired for the expressway is concerned, the answering respondent is setting out below a chart showing the total area acquired for the expressway ; total No. of villagers affected by the acquisition; total No. of land owners affected by the acquisition and the total No. of farmers who have accepted compensation:

Sl.	Total area land owners	Total No. of farmers who	Total No. of affected by	Total No. of affected by	No. acquired/Spoiled villages have accepted expressway (in the the compensation hectares) acquisition acquisition

1. 1604.0493 121 12283 11393

22. In para 41 it is stated that the regard have to the total area covered by the notification acquiring the land, and the number of land owners likely to be affected, it would have been impossible for the State Government to afford individual opportunity to each land owner. In case such process was followed, the entire progress and expediency of the project would have been defeated.

23. Section 17 of the Act confers powers on the State Government to dispense with the normal procedure u/s 5A in exceptional cases of urgency. The provisions of Section 17 have come up for consideration of Supreme Court in long line of cases of which the reference may be made from the year 1971, in *Jage Ram and Others Vs. State of Haryana and Others*, *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, *State of Punjab and Another Vs. Gurdial Singh and Others*, ; *Hari Singh and Others Vs. State of U.P. and Others*, ; *Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others*, *State of U.P. Vs. Smt. Pista Devi and Others*, *Jai Narain and Others Vs. Union of India and Others*, *Union of India and others Vs. Praveen Gupta and others*, *Om Prakash and Another Vs. State of U.P. and Others*, *Bhagat Singh Vs. State of U.P. and Others*, *First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another*, *Amar Singh Vs. State of U.P. and Others*, *Union of India (UOI) and Others Vs. Mukesh Hans etc., Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others*, *Sheikhar Hotels Gulmohar Enclave and Anr. v. State of U.P. and Ors.* 2008 (6) ADJ 307 : 2008 (4) AWC 3875 (SC); *Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another*, *Mahender Pal and Ors. v. State of Haryana and Ors.* 2009 (4) AWC 3464 (SC) and *Babu Ram and Anr. v. State of Haryana and Anr., Civil Appeal No. 6864 of 2009, decided on 7.10.2009 : 2010 (1) AWC 68 (SC).*

24. In para 16 of *Krishan Lal Arneja's* case (supra), the Supreme Court held:

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 50A 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.

25. In *Nirodhi Prakash Gangoli* (supra), the Supreme Court held in para 5 as under :

The question of urgency of an acquisition u/s 17(1) and (4) of the Act is a matter of subjective Satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers u/s 17(1) and (4) of the Act, and issues notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the concerned authorities. If an order invoking power u/s 17(4) is assailed, the Courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind. Any post notification delay subsequent to the decision of the State Government dispensing with an enquiry u/s 5A by invoking powers u/s 17(1) of the Act would not invalidate the decision itself specially when no mala fides on the part of the Government or its officers are alleged. Opinion of the State Government can be challenged in a Court of law if it could be shown that the State Government never applied its mind to the matter or that action of the State Government is mala fide. Though the satisfaction u/s 17(4) is a subjective one and is not open to challenge before a Court of law, except for the grounds already indicated, but the said satisfaction must be of the appropriate Government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Government that there was urgency even though cannot be conclusive but is entitled to great weight, as has been held by this Court in *Jage Ram and Others Vs. State of Haryana and Others*, Even a mere allegation that power was exercised mala fide would not be enough and in support of such allegation specific materials should be placed before the Court. The burden of establishing mala fides is very heavy on the person who alleges it. Bearing in mind the aforesaid principles if the circumstances of the case in hand are examined it would appear that the

premises in question was required for the students of National Medical College, Calcutta and the notification issued in December, 1982 had been quashed by the Court and the subsequent notification issued on 25.2.1994 also had been quashed by the Court. It is only thereafter the notification was issued under Sections 4(1) and 17(4) of the Act on 29.11.1994 which came up for consideration before the High Court. Apart from the fact that there had already been considerable delay in acquiring the premises in question on account of the intervention by Courts, the premises was badly needed for the occupation of the students of National Medical College, Calcutta. Thus, existence of urgency was writ large on the facts of the case and therefore, said exercise of power in the case in hand, cannot be interfered with by a Court of law on a conclusion that there did not exist any emergency. The conclusion of the Division Bench of Calcutta High Court, therefore, is unsustainable.

26. In *Mahender Pal v. State of Haryana* (supra) following the judgments in *Mukesh Hans* (supra) and *Krishan Lal Arneja* (supra), the Supreme Court held in paras 13 and 14 as follows :

13. The purported public purpose for which the land is to be acquired is for laying down a road.

We are not unmindful of the fact that the road connection is one of the purposes mentioned in sub-section (2) of Section 17 of the Act in respect whereof Sub-section (4) thereof would apply. But the same would not mean that for the purpose of road connection irrespective of the nature of cases and/or irrespective of the nature of the road to be constructed; Sub-section (4) of Section 17 of the Act could be invoked.

14. As an extraordinary power has been conferred upon the appropriate Government in terms whereof the normal procedure laid down u/s 5A of the Act could be dispensed with, the High Court, in our opinion, should have entered into the merit of the . matter. [See *Mahadevappa Lachappa Kinagi and Ors. v. State of Karnataka and Ors.* (2008) 12 SCC 418 : 2008 (3) SCCD 1152 : 2008 (3) AWC 2966 (SC)].

27. In *M/s. Sheikhar Hotels Gulmohar Enclave* (supra), the Supreme Court held :

Therefore, it depends upon case to case where in a given situation Section 5A has been correctly invoked and the authorities were satisfied in an objective manner. In the present case, there is no two opinion that because of the globalization of economy Indian economy is progressing with fast speed, therefore, in order to keep pace with the speed, invocation of Section 5A has become imperative. Traffic congestion is a common experience of one and all and it is very difficult to negotiate with the traffic congestion in Delhi and National Capital region. Therefore, in the present situation, it cannot be said that the invocation of Section 5A was for ulterior purpose or was arbitrary exercise of the power. Since the Master Plan has already been prepared and it has been approved by the Planning Board and they have sanctioned a sum of Rs. 20.65

crores for the development of this Transport Nagar and widening of the National High No. 91 into four lanes. Therefore, the proposal was approved by the Board and it got the sanction from the National Capital Region Planning Board and ultimately the Government invoked the power u/s 17(4) read with Section 5A of the Act dispensing with the objections. In the light of these facts it cannot be said that invoking of power was in any way improper exercise. There is need for decongestion of the traffic and it is really the dire need of the hour and earliest it is implemented, better for the people at large.

28. In Babu Ram (supra), the Supreme Court held :

In the present case, we are not concerned with technicalities but the likelihood of a health-hazard to the inhabitants of the area if the S.T.P. was set up in the acquired site. The stand taken by the respondent that the appellants could have filed objections to the proposed acquisition is difficult to appreciate since the right to file such objections had, in fact, been taken away by invoking the provisions of Section 17(4) of the L.A. Act. Such a stand taken on behalf of the respondent authorities only serve to strengthen the case of the appellants that an opportunity should have been given to them to file objections to the proposed acquisition. As indicated hereinabove in the various cases cited by Mr. Pradip Ghosh and, in particular, the decision in Krishan Lal Arneja's case (supra), in which reference has been made to the observations made by this Court in Om Prakash's case (supra), it has been emphasized that a right u/s 5A is not merely statutory but also has the flavour of fundamental rights under Articles 14 and 19 of the Constitution. Such observations had been made in reference to an observation made in the earlier decision in Gurdial Singh's case (supra) and keeping in mind the fact that right to property was no longer a fundamental right, an observation was made that even if the right to property was no longer a fundamental right, the observations relating to Article 14 would continue to apply in full force with regard to Section 5A of the L.A. Act.

The observations made both in Gurdial Singh's case (supra) and in Om Prakash's case (supra) assign a great deal of importance to the right of a citizen to file objections u/s 5A of the L.A. Act when his lands are being taken over under the provisions of the said Act. That in the said decisions, such right was elevated to the status of a fundamental right, is in itself sufficient to indicate that great care had to be taken by the authorities before resorting to Section 17(4) of the L.A. Act and that they had to satisfy themselves that there was an urgency of such nature as indicated in Section 17(2) of the Act which could brook no delay whatsoever.

Since Section 5A of the L.A. Act had been dispensed with, the stage u/s 9 was arrived at within six months from the date of the notice issued under Sections 4 and 17(2)(c) of the L.A. Act. While such notice was issued on 23rd November, 2005, the award u/s 11 was made on 23rd May, 2006. During this period, the appellants filed a suit, and, thereafter, withdrew the same and filed a writ petition in an attempt to protect their constitutional right to the property. It

cannot, therefore, be said that there was either any negligence or lapse or delay on the part of the appellants.

The only other aspect of the matter which requires consideration is whether the lands in question have already been utilized for the Sewage Treatment Plant. From the averments made and photographs which were brought to our notice, it appears that the site is still lying unutilized. In such circumstances, we consider it only proper that the appellants should get an opportunity to file their objections to the proposed acquisition u/s 5A of the L.A. Act and the respondents would be at liberty to take consequential steps after disposal of the same.

We, accordingly, dispose of the appeal by directing that notwithstanding the invocation of Section 17(2)(c) of the L.A. Act in its application to the States of Punjab and Haryana, the appellants will be at liberty to file objections u/s 5A of the L.A. Act within a month from the date before the concerned authority, who will, thereafter, dispose of the same upon giving the objectors, if any, an opportunity of hearing and placing their respective cases.

The learned advocate for the appellants is directed to communicate this order to the L.A. Collector-cum-District Revenue Officer, Jind, Haryana, within a week from date.

There will be no order as to costs.

29. This Court has consistently followed the judgments of the Supreme Court in the matter of invoking Section 17(4) and dispensing with enquiry u/s 5A of the Act. Reference may be made to Smt Manju Lata Agrawal v. State of U.P. and Ors. 2007 (9) ADJ 447 ; Sudhir Chandra Agrawal v. State of U.P. 2008 (3) ADJ 289 : 2008 (6) AWC 6073 and Munshi Singh v. State of U.P. 2009 (8) ADJ 360 . In Manju Lata Agrawal this Court summed up the legal position as follows:

Thus, from the aforesaid settled legal propositions, it is apparent that the Government must be satisfied that demand of land by invoking urgency powers is bona fide and persons interested cannot be deprived of their legal right to file objection just to avoid lethargy on the part of the officers of the State Government or for achieving some other ulterior purpose.

It is a settled legal proposition that the scope of judicial review is limited to the decision making procedure and not against the decision of the authority. The Court could review to correct errors of law of fundamental procedural requirements, which may lead to manifest injustice and can interfere with the impugned order in exceptional circumstances. In judicial review, the Court cannot trench on the jurisdiction to appreciate the evidence and arrive at its own conclusion as it is not an appeal from a decision. Review of the decision is not permissible where the findings are recorded by an authority on the basis of legal evidence and the said findings are not based either on ipsi dixit or conjectures or surmises. The Court cannot interfere on the ground that the matter requires appraisal of evidence. "Between appraisal of evidence and total lack of evidence,

there is an appreciable difference which could never be lost sight of.

30. In Sudhir Chandra Agrawal once again the legal position was summed up as follows :

The sufficiency or insufficiency of the material, and the names of industries, which may have applied with concrete proposals for establishment of industrial units, is not material for the purposes of judicial review of the subjective satisfaction of the State Government. When there exists material before the State Government, in the shape of recommendations and that material is relevant for applying the mind for recording subjective satisfaction of invoking the urgency clause for acquisition of the land, the law does not permit the Court to consider the material as if it was weighing the evidence for the purposes of recording subjective satisfaction of invoking the urgency clause for acquisition of the land. If the material is relevant, on which competent authority, as reasonable person may invoke the urgency clause for acquisition of the land, the Court would not put such material on the scales, to weigh or measure such urgency. The Court is not competent to carry out judicial review of the sufficiency or insufficiency on the material placed before it. What the Court required to see is whether such material is relevant, and that the competent authority in the State Government could have formed an opinion without their being any motive or ill-will for invoking the urgency clause. In the present case, the State has given in the counter-affidavit, the material on which it had placed reliance and has produced the material before us, which we find to be relevant for the purpose of invoking urgency clause. Even if we may, after perusing the record arrive on different conclusion, we would restrain ourselves from interfering, as in such case we would be substituting our opinion in place of opinion of the competent authority in the State Government. If we do so, we would be sitting in appeal over the subjective satisfaction recorded by the State Government. The legal position obtained from the judicial precedents restrain us from doing so.

31. In this case the State Government had approved the project in the year 2001 and had invited bids in 2003 for laying out expressway connecting the cities between N.O.I.D.A. and Agra and for development of the region by proposing five areas for development. The entire cost of acquisition is to be borne by respondent No. 5. The successful bidder has deposited the money required for acquisition of land with Y.E.I.D.A. The compensation of acquisition is to be paid by Y.E.I.D.A. The B.O.T. agreement and the agreement for development of the land provides for fixation of the tolls by the State Government for 36 years and leasing out the land for 90 years for development of the area. The entire development therefore is being carried out by the State Government through Y.E.I.D.A., which is a instrumentality of the State.

32. Shri B.D. Mandhyan, Sr. advocate submits that Delhi is connected with Agra by National Highway No. 2 and that the need for another road connecting the two great cities at a little faster speed is not a public purpose. The development of 25 million sq. mtrs. of land by the company on the selected sites along the

expressway is for the purposes of profits of public limited company and therefore it cannot be said that the land was needed for public purpose, and in any case there was no such urgency to acquire the land, to dispense with the enquiry and to take away the valuable right of the petitioners and farmers to object to the acquisition. The right to property may not be a fundamental right, it is a constitutional right and has now been recognized as human right under Article 21 of the Constitution of India. The right to property, therefore, should be protected by the Court. Where large tracts of fertile land with constructions used for business purpose and agriculture as source of livelihood of the citizens is being acquired for building an alternate road, the urgency of the purpose cannot be assumed. Shri Mandhyan would submit that the project was already delayed from the year 2001 till 2008. The agreement between the State Government and the respondent No. 5 was executed on 7.2.2003, and therefore, there was no such urgency to invoke Sub-section (4) of Section 17 for acquisition of the land dispensing with the valuable right of the citizens to have a say in the matter. He has placed reliance upon latest judgment in Essco Fobs case (supra), Mahendra Pal (supra) and Babu Ram (supra) in submitting that the notification invoking urgency clause are liable to be set aside by the Court.

33. In order to verify whether there was any material with the State Government to form an opinion and to exercise its powers u/s 17(1) and Section 17(4) of the Act, dispensing with enquiry u/s 5A of the Act, and that the State Government had applied its mind on such material, we summoned the records of the three concerned notifications. Shri Satish Chaturvedi, Addl. Advocate General assisted by Shri M.C. Tripathi, Addl. Chief Standing Counsel has produced the records alongwith the material collected by the Collectors/District Magistrate and placed before the State Government for forming an opinion. He has taken us through the various documents and forms on which the Collectors have recommended on Forms X alongwith justification of their recommendations as well as its summary given in the office note placed before the State Government. The three files produced before us relate to village Kuberpur, district Agra, village Malupur Pargana Atmadpur, district Agra and village Tappal district Aligarh for construction of interchange.

34. The notification u/s 4(1)/17 of the Act for proposing acquisition of land of village Kuberpur was made on 20.2.2009 and was published in two newspapers "Amar Ujala" and "Dainik Jagran" on 27.7.2009. The munadi was made on 7.3.2009. The notification u/s 6(1)/17 was issued on 15.6.2009 and was published in the two newspapers on 18.6.2009. The notice u/s 9 was sent on 20.6.2009 and possession was taken on 8.7.2009. In the recommendation sent by the District Magistrate, considered by the State Government on 11.2.2009 before publication of notification u/s 4, the District Magistrate had after giving details of land proposed to be acquired, had forwarded the Form-X alongwith justification referred to in para 3 of the noting of the State Government. The Collector, Agra recommended that in order to acquire the land for Y.E.I.D.A. established under the U.P. Industrial Area Development Act, 1976 the

preparation of plan, identification of land for units for industrial development, infrastructural facilities, the lease or sale of the land, the construction of building and for industrial units. Y.E.I.D.A. has been given the regulating powers. The village Kuberpur is in the notified area of Y.E.I.D.A. and which urgently requires the proposed land for construction of interchange" for Y.E.I.D.A. In case of any delay there is a strong possibility of encroachment on the land, which will affect the project of Y.E.I.D.A. in public interest. In para 4 it was stated that hearing of oral and written objections will take several years causing indefinite delay in construction of interchange. The proposal was forwarded with recommendation signed by the Under Secretary, Industrial Development, Government of U.P., Special Secretary, Industrial Development ; Shri Arun Kumar Sinha, Secretary, Rehabilitation and Industrial Development Department; Government of U.P.; Shri V.N. Garg, Principal Secretary, Rehabilitation and Development, Government of U.P. on 12.2.2009 and by Shri Shailesh Krishna, the Principal Secretary to Chief Minister on 18.2.2009.

35. As regard the acquisition of land for Y.E.I.D.A. for interchange in village Malupur for construction of Yamuna Expressway, Pargana Atmadpur, district Agra for acquisition of 4.5322 hec. of land the proposal with recommendation of District Magistrate, Agra on Form-X and the justification similar to and in the same language as in the case of village Kuberpur, district Agra was placed before the State Government alongwith the notings. The proposal bears recommendations and signature of Under Secretary, Industrial Development Department, Government of U.P. on 23.10.2008 ; Special Secretary, Industrial Development, Government of U.P. on 24.10.2008; Principal Secretary, Industrial Development and Commissioner on 30.11.2008 ; Special Secretary, Industrial Development on 10.12.2008 and the Secretary to Chief Minister on 15.12.2008.

36. For village Tappal in Tehsil Khair, district Aligarh proposal for acquisition of 48.572 hec. of land for Y.E.I.D.A. for construction of Yamuna Expressway with the recommendation of the District Magistrate and justification for invoking urgency clause was placed before the State Government and was recommended and signed by the Under Secretary and Special Secretary, Industrial Development Department on 16.1.2009 ; Secretary, Rehabilitation and Industrial Development, Department of Government of U.P. on 16.1.2009 ; Principal Secretary, Industrial Development on 16.1.2009 and by the Secretary to the Chief Minister on the same day on 16.1.2009. The proposals were accepted by the State Government for acquisition and for invoking urgency clause for construction of Yamuna Expressway by Y.E.I.D.A.

37. All the relevant and concerned authorities agreed with the office note, giving details of the material on the file with the recommendation of the District Magistrate to invoke Section 17(4) and to dispense with the enquiry u/s 5A of the Act. The record clearly demonstrates that after considering the project and making enquiries and spot inspections including the survey of the revenue records. District Magistrate had recommended that looking into the purpose of

the acquisition and the large area involved, and further the fact that the land is needed for construction of road and interchange and planned development, as well as the fact that in future there is strong possibility of encroachments over the subject land, Section 17(4) was required to be invoked for dispensing with the enquiry.

38. The pre-notification delay of about five years from the date of agreement, i.e., 7.2.2003 to the date of notification u/s 4 of the Act, dated 28.2.2009 has been sufficiently explained in the counter affidavit of the State Government and Y.E.I.D.A. The State Government was conscious of its accountability and referred the matter for enquiry under the Commission of Enquiry Act, 1956 appointing Justice Siddheshwari Narain, a retired Judge of Patna/Calcutta High Court in the year 2003. The report was submitted on 12.10.2006 and was thereafter subjected to a public interest litigation. In *Ashutosh Srivastava v. State of U.P.* (supra), the writ petition was dismissed by the Court on 14th March, 2008. The State Government, thereafter, started making surveys and that the District Magistrate made proposals for acquisition of the land for the project dispensing with the enquiry u/s 5A of the Act.

39. In *Om Prakash* (supra), the Supreme Court considered the delay on the part of the State at two different stages. The first was the delay caused from the demand made by N.O.I.D.A. to the State Government, which took a decision to invite the land u/s 4(1) read with Section 17 (4) for dispensing with enquiry u/s 5A of the Act ; and the second was the delay in issuing declaration u/s 6 of the Act. The Court held that there been a case of grave urgency notification u/s 4(1) could have been issued at the earliest on receiving the demand of acquisition and declaration u/s 6 would also have been made, in the vicinity to the notification u/s 4(1) of the Act. The notification, however, were issued after nine months from the date u/s 4 of the Act, and that State authorities miserably failed to explain the delay, at both the stages and therefore there could not be any real urgency to dispense with enquiry. The Court explained *Pista Devi*'s case in which a corrigendum was issued for notification u/s 4(1) of the Act and the State succeeded in explaining the delay and in taking a view contrary to the view taken by the Court in *Narayan Govind Gavate*, it was observed that the judgment of three Judge Bench was no doubt explained by latter two Judge Bench in *State of U.P. v. Pista Devi*, was confined to the fact situation in those days, when it was rendered. The later Bench of two Judges could not have laid down any legal proposition by way of a ratio, which was contrary to the earlier decision of the three Judge Bench in *Narayan Govind Gavate*. In *Om Prakash* (supra) the two Hon'ble Judges of the Supreme Court distinguished the ratio in *Smt. Pista Devi* (supra) and held that the judgment in *Narayan Govind Gavate* (supra) being of a larger Bench could not have been overruled by a Bench of two Hon'ble Judges, as the delay that had occurred prior to issuance of Section 4 notification, and the subsequent delay in making the declaration u/s 6 of the Act was not explained, the dispensation of enquiry u/s 5A was bad. The Supreme Court thereafter in *Om Prakash* (supra) considering the fact that much delay had already been caused

and that land acquisition proceedings had been challenged by only a few persons, did not consider it proper to quash the acquisition proceedings. The Supreme Court merely gave an opportunity to the petitioners to file applications u/s 48 of the Act for releasing their land by the Government from acquisition. Subsequently in a sequel of the judgment in Ved Prakash and Others Vs. Ministry of Industry, Lucknow and Another, the Supreme Court dismissed the appeal on the ground that in Om Prakash (supra), it was contended that the land was abadi area existing prior to the notification, the evidence, however, was to the contrary and thus it was not feasible to release the land of the appellants from acquisition.

40. The record produced before us by the State Government enclosing the material of invoking urgency clause and the satisfaction of the State Government on the said material, has satisfied us that the State Government had sufficient material and had applied its mind to record its opinion that there was urgency to acquire the land to dispense with the enquiry u/s 5A of the Act. The writ petition filed in public interest was dismissed and that the Court has also rejected the challenge on the ground that acquisition was made for the company. The requisite 80% of the cost of acquisition of the land under the agreement was deposited in the year 2007. Out of 12282 land owners of the area of 1604 hecets., 11397 have accepted the compensation. In these 9 writ petitions, there are 35 petitioners representing only 21.03 hecets. The cost of project according to Shri Navin Sinha, senior advocate has increased from initially 1700 crore in the year 2001, to 9700 crore and is going on increasing per day. The road has been laid from N.O.I.D.A. to Greater N.O.I.D.A. and the work is going on, on the entire road except on a small portions on which the Court had passed orders to maintain status quo. According to Shri Navin Sinha in addition to thousands of tourists, who visit Agra from all over the world every day, there is likely to be great influx of sports tourists visiting India at the time Commonwealth games. They all need a fast moving road connection to reach Agra to cut down the travelling time. The National Highway No. 2 on the western bank of Yamuna passes through busy areas in the State of Haryana and Rajasthan, through the cities of Faridabad, Ballabgarh and Palwal. The fast moving road on the eastern side of Yamuna crossing through the areas falling only in the State of U.P., with modern facilities is a felt necessity in public purpose. The construction is on the verge of completion, It will be ironical for the tourism sector and residents of the area looking for development and opportunity for employment, to be deprived of the project at such an advance stage.

41. The respondents have fully explained the pre-notification delay. The pendency of the proceedings of the Commission holding enquiry and the public interest litigation, is sufficient explanation of the delay in issuing notifications, after the agreement was signed. The fact situation as exists today, also leaves us with no choice to exercise discretion. Out of 12282 land owners 11397 have received compensation under agreement, and that the land owners of only 21.03 hectares out of 1604 hectares are aggrieved by the acquisition of their land. The scales of justice must tilt towards the right to development of the millions, who

will be benefited from the road and the development of the area, as against the human rights of 35 petitioners, who have approached the Court complaining that they were not heard before the declaration u/s 6 of the Act acquiring the land was issued on 15.6.2009.

42. We are conscious that the construction of road has to be made in an alignment, and thus, it would not be appropriate for us to give any direction to the State Government to consider to exempt 21.03 hecets. of the 35 petitioners u/s 48 of the Act. The directions to consider to exempt the land covered by constructions may seriously jeopardize the project.

43. So far as acquisition of the road for interchange on the land acquired by the railways is concerned, it is stated by Shri Navin Sinha, senior advocate appearing for the respondent No. 5 that the construction of interchange is essential part of the project. He submits that the construction of bridges, culverts and interchanges are necessary for a fast moving six lane express way and thus no different standards could be applied for acquisition of land and for invoking u/s 17(1) and (4) of the Act in respect of land needed for interchange. In para 49 of the counter-affidavit of Shri Vinod Kumar Singh it is stated that plot No. 121 has not been acquired and thus no permission was required to be taken from the Railways.

44. No other point was pressed. All the writ petitions are dismissed.