

(2010) 07 AHC CK 0379
In the Allahabad High Court

Narendra Road Lines Pvt. Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 14, 19, 21, 300A, 39
Contract Act, 1872 — Section 23
Land Acquisition Act, 1894 — Section 11, 17, 3, 31, 39

Citation : (2010) 07 AHC CK 0379

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Shri B.D. Mandhyan, Senior Advocate assisted by Shri Sanjeev Kumar; Shri Salil Kumar Rai, Shri Uma Nath Pandey; Smt. Sarita Shukla and others for the petitioners. Shri Satish Chaturvedi, Additional Advocate General assisted by Shri M.C. Chaturvedi, Chief Standing Counsel, Shri M.C. Tripathi, Additional Chief Standing Counsel and Shri J.N. Maurya, Standing Counsel have appeared for the State respondents. Shri Shashi Nandan, Senior Advocate assisted by Shri Ramendra Pratap Singh has appeared for "Yamuna Expressway Industrial Development Authority" (in short, "YEIDA"). Shri Navin Sinha, Senior Advocate assisted by Shri Yashwant Varma has appeared for Jaypee Infratech Ltd.

2. In these writ petitions, the land owners, bhumidhars, lessees and persons having variety of rights over the subject land, have challenged the notifications issued by the Government of U.P. under Sub-section (1) of Section 4, applying the provisions of Sub-section (1) of Section 17 of the Land Acquisition Act, 1894 (in short, "the Act") for acquisition of the notified land for public purpose namely for the, "land for development", under "Yamuna Expressway Project" through "Yamuna Expressway Industrial Development Authority". The notifications have also recorded the opinion of the Governor that the provisions of Sub-section (1)

of Section 17 of the Act are applicable to the land inasmuch as the land is urgently required for development, under "Yamuna Expressway Project" through "Yamuna Expressway Industrial Development Authority" and it is necessary to eliminate the delay likely to be caused by an enquiry u/s 5A of the Act applying the provisions of Sub-section (4) of Section 17 of the Act. The notifications under Sub-section (1) of Section 4, were followed by the notifications declaring u/s 6 the satisfaction of the State Government for acquiring the land, for the same purpose with directions u/s 7 of the Act to the Collector of Agra to make orders for acquisition of the land and for taking possession under Sub-section (1) of Section 9 of the Act, on the expiry of 15 days from the date of publication of the notice, though no award u/s 11 has been made. The State Government has acquired 2500 hectares (25 million square meters) of land for development at five locations along the expressway, namely at Site-I: Noida (Sultanpur) (500 hectares); Site-II: between Greater Noida & Dankaur (500 hectares); Site-III: between Dankaur and proposed TEZ (500 hectares); Site IV: between proposed Airport and Tappal (500 hectares) and Site-V: near Agra (500 acres). The first three sites are situated in revenue district Gautam Budh Nagar; the Site-IV situated in revenue district Aligarh and the Site-V situated in revenue district Agra.

3. 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 (NOIDA) to Agra, and invited bids from interested parties for the project. The bid document was issued by the Taj Expressway Authority (TEA), now named as "Yamuna Expressway Industrial Development Authority" vide Notification dated 11.7.2008, setting U.P. 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;
- (iii) To relieve NH-2 which is already congested and runs through the heart of cities like Faridabad, Ballabgarh and Palwal.

4. The project included building of six lane access controlled high way to run over about 160 kms. The project was offered as a Joint Venture (JV) in which a Special Purpose Vehicle (SPV) 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" (BOT) Scheme. To compensate the company undertaking the project, a provision was made to have at five different places, one of which is to be in Noida or Greater Noida, subject to availability, 25 million sq. mtrs. of land along the express-way 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.

5. M/s Jaypee Infratech Ltd. was shortlisted along with 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 (PIL) No. 30322 of 2007 Ashutosh Srivastava v. State of U.P. and Ors., 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 then Chief Justice Mr. H.L. Gokhale and Hon"ble Mr. Justice Vineet Saran dismissed the writ petition by a judgment on March 14th, 2008, reported in 2008 (3) ADJ 427 (DB). The Court held that before finalising the contract the State Government or the Taj Expressway Authority (TEA) had undertaken the requisite research. The State Government and the TEA 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 scrutinised 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 malafide. 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.

6. The State Government, thereafter, issued notifications acquiring the land in the districts of Gautam Budh Nagar, Aligarh, and Agra for the purposes of construction of expressway. The notifications u/s 4 and 6 of the Act dated 15.10.2007 and 4.1.2008 acquiring land situate in village Korab Tehsil Mahaban Distt. Mathura came U.P. 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 utilise/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.

7. 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 U.P. 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.

8. In the third round of litigation the farmers of Mathura and Agra challenged the acquisition of land for construction of Expressway and for inter-change of Express-way, mainly on the ground that there was no urgency much less any special urgency, for construction of road, to acquire fertile agricultural land. The Writ Petition No. 31314 of 2009, Nand Kishore Gupta and Ors. v. State of U.P. and Ors., was connected with a batch of writ petitions challenging acquisition of land for construction of expressway on various grounds including the grounds, that the notifications under Sections 4 and 7 invoking urgency Clause under Sub-section (1) of Section 17 and applying Sub-section (4) of Section 17 dispensing with the enquiry u/s 5A were issued under colourable exercise of powers. There was no specified project. The notifications were vague and that there is no urgency to acquire the land for dispensing with Section 5A of the Act. The entire action was malafide. The acquiring body did not deposit 80% compensation of the estimated amount u/s 17(3A) of the Act before taking possession. It was also alleged that for construction of inter change under the project, it was not necessary to acquire the land. The inter change also involves the land of Railways and that all the notifications were liable to be quashed. The entire batch of the writ petitions challenging acquisition of land for construction of expressway was dismissed by a judgment delivered by us on 30.11.2009 in the leading case of Nand Kishore Gupta and Ors. v. State of U.P. and Ors. Civil Misc. Writ Petition No. 31314/2009 and other connected petitions reported in 2009 (10) ADJ 535 DB. We held that the State Government had approved the project in the year 2001 and had invited bids in the year 2003 for laying out expressway connecting the cities between Noida and Agra and for development of the region by proposing five areas for development. The entire cost was to be born by the successful bidder. The money was deposited by the company for acquisition of land for YEIDA. The compensation of acquisition was to be paid by the YEIDA under the agreement for development of the land provided for fixation of toll tax by the State Government for 30 years and leasing out the land for 90 years for development of the area the entire development was being carried out by the State Government through YEIDA, which is an instrumentality of the State.

9. The reasons given by us in dismissing the writ petitions are also relevant for consideration of this batch of writ petitions, and are quoted as below:

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 country affidavit of the State Government and YEIDA. 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 Noida to the State Government, which took a decision to acquire the land u/s 4(1) read with Section 17(4) after 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 had 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*, it 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 and 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 rejecting 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, Sr. 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 Noida to Greater Noida 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 jeopardise 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, Sr. 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.

10. Shri B.D. Mandhyan, Senior Advocate assisted by Shri Sanjeev Kumar has appeared in leading Writ Petition No. 29682 of 2009 Narendra Road Lines Pvt. Ltd. v. State of U.P. and Ors. challenging the notification under Sub-section (1) of Section 4 dated 31.3.2009, and the notification u/s 6 read with Sub-section (1) of Section 17(1), applying Sub-section (4) of Section 17 dispensing with enquiry u/s 5A of the Act dated 2.6.2009. He submits that Narendra Road Lines Private Limited is a Transport Company having 125 Multi Axle Trucks. They have also engaged 100 Trucks on contract for running the business of road transport. The Trucks are provided for hire, to the Steel Authority of India and the Central Ordnance Depot at Agra. The petitioner company is a "A" Class transporter in the business since 1960. It has purchased the land in dispute intended to be developed as Transport Nagar at National Highway-2 (NH-2), Village Chhalesar, Tehsil Etmadpur, District Agra. The company has acquired 1.5676 hectares (15676 sq. meters) of land in plot No. 1163M by five sale deeds.

11. Shri B.D. Mandhyan submits that Jaypee Infratech Limited (the Company) is a private company. The acquisition of land for a private company cannot be treated to be public purpose. The notification suffers from colourable exercise of power by the Government and is malafide. Under the contract the company will construct the road from its own resources. The entire amount is to be paid by the company, in consideration thereof the company will be entitled to charge toll tax for next 36 years from the first date of construction of road. The land is to be selected by the company, to be provided for construction of Hi-tech Cities at three places namely Noida, Chhalesar in District Agra and Tappal in district Aligarh. The entire infrastructure will be completed at the expenses of the company and that the compensation is also being determined by private negotiation between the company and the tenure holders at Rs. 400 per sq.

meter. The amount has been paid by the company to the tenure holders for construction of road to be completed by 2010.

12. It is submitted that the proposed expressway is about 1 1/2 kms away from the land of the petitioner, abutting National Highway-2. There is no scheme of expansion of "Yamuna Expressway" road. The petitioner's land is not affected by the construction of Yamuna Expressway. It is only for the development of the project by a private company. The project is of a private nature. It is a profit earning project and thus the purpose of the acquisition is not public purpose for which the valuable agricultural holdings can be usurped, without any opportunity of hearing, which is most essential as the acquisition of land involves the rights of the petitioner having flavour of fundamental right. It is submitted that the nature of urgency for which Sub-section (4) of Section 17 can be applied, is the urgency given in Sub-section (2) of Section 17, namely whenever owing to the sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for Railway Administration to acquire the immediate possession of any land, for maintenance of their traffic or for the purpose of making thereon a river-side or ghat station or for providing convenient connection or access to any station, or, the like. There is no such urgency for Yamuna Expressway Project and for High-tech Cities there can be no urgency for the owner of the agricultural land to be deprived of the opportunity before invoking the urgency clause.

13. Shri B.D. Mandhyan submits that the project is the dream child of the Chief Minister and therefore the mandatory requirements of law have been give up. The entire project is for the benefit of the company, and thus the acquisition should have been made under Chapter VII of the Land Acquisition Act, in which there is no question of invocation of urgency Clause and depriving hearing to the petitioners. The expressway has been illegally and arbitrarily extended by 5.3 kms, way beyond, from 160 kms. The expansion of the road will show that the State Government has issued notifications applying urgency Clause by way of empty formality. The agreement dated 7.3.2003 conclusively proves that the land for development was selected for the company. It was not part of the agreement and thus the acquisition for the land for development can be separated from the acquisition for the expressway. The terms of the agreement would clearly show that it is one way affair inasmuch as the road has to pass through the virgin area along the Yamuna river. Clause 4.1.d of Chapter IV provides that the premium of the land shall be equivalent to the acquisition cost which shall be actual compensation for land owner and shall be payable by the company. Clause 4.3.a provides that the land for development shall be on lease for 90 years. Clause 4.3.c provides that the entire development cost shall be paid by the company. The lease will be renewed at the rate of Rs. 100/- per hectare per annum payable per year and Clause 4.3.b provides that transferee can assign sub lease without permission of the government. The lease rent by transferee of the respective share is to be paid to TEA (now YEIDA). Under Chapter IV Clause 4 the company has been given authority to make use, the land for commercial,

industrial, institutional, residential and amusement at it's sweet will. No plan has been prepared and annexed with the agreement.

14. Shri Mandhyan further submits that Clause 4.5 of Chapter IV provides that the lease will be perpetual and that the subsequent renewal shall be granted by the authority. Not a single shell is invested by the Government towards development project. The cost of 25 kms in Noida, Greater Noida is to be borne by the company vide Clause 4.4.b. He points out that Clause 11.5.1 of Chapter XI of the agreement provides that the termination of the contract will not affect the land for development. It shall survive and will be treated as independent contract.

15. Shri Mandhyan further submits that with 100% payment to be made by the company, and the survival of the contract beyond its termination for the land for development with an absolute right to the company and with no forfeiture Clause virtually amounts to a sell out by the State Government to the company of the land on the pretext of the construction of expressway which is primarily a State function. He submits that the lease rent at 10 paisa per 100 meter is too ridiculous a lease rent to be paid to the State Government by the company. The contract is virtually a perpetual lease and that the acquisition of expressway, in any case for five packages for development for which the land has been acquired and challenged in the present case, is the acquisition for the company. He submits that the previous judgments in Ashutosh Srivastava (supra) and Balbir Singh (supra) were obtained by concealment of the necessary facts at the behest of the company. Shri Mandhyan further submits that no survey has been made, no map has been drawn for the road and the development projects. The virgin land does not mean the land which is under cultivation along with the Yamuna river and that the width of the land acquired for development at many places is beyond 500 meters, contrary to the agreement. The petitioner's land in any case is beyond 500 meters of the width of the road. The petitioner's land is beyond 165 kms and is at 165.53 kms adjacent to National Highway-2. There has been no notification extending the length upto 165.53. He submits that the entire acquisition is bad in law suffering from malafides and is liable to be set aside by the Court. Shri Mandhyan has relied upon judgments in Shyam Behari and Others Vs. State of Madhya Pradesh and Others, (Full Bench judgment) in submitting that where the entire compensation has to be paid by the company, and no part of the compensation comes out of the public revenue or some fund controlled or managed by the local authority, the notifications declaring that the land is needed for public purpose is invalid. He has relied upon Smt. Somavanti and Others Vs. The State of Punjab and Others, in submitting that there is a difference between the conclusive proof and conclusive evidence with regard to public purpose u/s 6(3) of the Act. The declaration u/s 6 is not to be made arbitrarily, but on the basis of material placed before it by the Collector. The words "wholly or partly out of public revenue" u/s 6(1) does not necessarily mean that a substantial part of estimated compensation has to come from public funds. What is substantial part of compensation depends upon the fact of each

case. He submits that in *Amarnath Ashram Trust Society and Another Vs. Governor of U.P. and Others*, the Supreme Court found that where the entire cost of acquisition was to be born by the Society, merely because notifications stated that the land is needed for public purpose, it cannot be said that the acquisition was for public purpose and not under Chapter VII of the Act under the Land Acquisition (Companies) Rules, 1963.

16. Shri Mandhyan further submits that this High Court and Supreme Court have consistently held that the provisions of Section 5A of the Act, cannot be dispensed with in cases where there is no real urgency and in which there is no material, on which such satisfaction could be arrived at. The powers to dispense with the enquiry u/s 5A have to be exercised with great care and caution. He relies upon *Devinder Singh and Ors. v. State of Punjab and Ors.* (2008) 1 SCC 728 ; *Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others, Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, Babu Ram and Another Vs. State of Haryana and Another*, and the judgment in *Pooran and Ors. v. State of U.P. and Ors.* Writ Petition No. 55578 of 2008 decided by this Court on 4.12.2009, setting aside the acquisition of land for Reliance Delhi Power Private Limited, a private registered private company by the farmers in villages situated in Tehsil Hapur, District Ghaziabad.

17. Shri Salil Kumar Rai appearing for the petitioners in Writ Petition No. 30794 of 2009 and 13 others, challenging the notifications under Sections 4 and 6 read with Section 17(1) and (4) and dispensing with enquiry in Section 5A, submits that his arguments are in addition to arguments advanced by learned Counsel appearing in Writ Petition No. 29682 of 2009 *Narendra Road Lines Private Ltd. v. State of U.P. and Ors.* His submissions challenging the notification are broadly classified by him as follows:

1. The acquisition is for a "company" as defined in Section 3 of the Act and therefore the procedure prescribed in Part VII and not Part II of the Land Acquisition Act, should have been followed and requirements of Section 5A could not have been dispensed with as Section 17(4) is not applicable in case of acquisitions for a company.

2. The acquisition is not for a "public purpose" and there is no application of mind by the appropriate government, i.e., the State Government, as to the public purpose for which the lands have to be acquired, the public purpose specified in the notifications is vague and appropriate factors necessary to be considered before deciding whether the acquisition is for a public purpose or not have not been taken into consideration.

3. Notification u/s 17(4) of the Act dispensing with the requirement of Section 5A of the Act is bad and without jurisdiction as conditions precedent for issuing a notification u/s 17(4) as prescribed in Section 17(1) and (2) of the Act do not exist and the aforesaid power has been exercised mechanically in a routine manner and is vitiated due to non-application of mind.

4. For previous reasons the impugned notification declaring the need as "public purpose" are colourable exercise of powers as the acquisition is essentially for a/ the company.

18. Shri Rai submits that in the present case the acquisition of the land for development is for a company as defined in Section 3 of the Act. He has extensively referred to the provisions of the Concessionaire Agreement between the "Taj Expressway Industrial Development Authority" and "Jaiprakash Industries Ltd" dated 7.2.2003, and has tried to demonstrate that the entire acquisition is exclusively for the benefit of and for the company. According to Shri Rai the agreement precedes the acquisitions through the impugned notifications. The total cost of the acquisition is to be borne by the company (Clause 4.1(a) and 4.3(c)). The land to be transferred is as per choice and request of the company subject to its availability, in such manner, that the company is entitled to achieve 150 Floor Area Ratio on such land (Clause 4.3(b)). The company is free to decide the land user and also the area of land to be allocated for different uses. It is free to decide whether sub leased land shall be in the form of plots, or constructed properties and no permission of TEA/YIEDA is required either for the land use or transfer of leasehold/sub-leasing/multiple sub leasing of land. Chapter-X of the agreement deals with Force Majeure and gives the events/ circumstances classified as political and direct as well as indirect non-political Force Majeure. The situations are given in Clause 10.5, and that in the event of termination of the agreement Clause 10.7 of the agreement is to be followed which empowers the company at its sole discretion to terminate the agreement by giving 30 days notice to the YEIDA if any of the force majeure events subsists for a period of 180 days or more within a continuous period of 365 days. The termination can also be before the construction of expressway. In the event of such termination of the agreement the company shall be entitled to retain the "land for development" transferred to it. Clause 10.8.1 provides that rights of the company in relation to the land for development to the extent such land has been transferred to it, shall not be affected and shall survive.

19. Shri Rai thereafter refers to Chapter XI of the agreement which deals with termination of the agreement otherwise than due to Force Majeure events. Clause 11.1 deals with termination for the Concessionaire's events of default. Clause 11.1.1 states the events that shall constitute an event of default by the Concessionaire, i.e., the company. The Concessionaire events of default are:- Concessionaire, i.e., the company becomes bankrupt or makes arrangement with or assignment in favour of its creditors or goes into liquidation or goes for a winding U.P. (Clauses 11.1.1(i)), or the company is in material breach of the agreement which has caused material adverse effect on the performance of the project (11.1.1(ii)). However the interesting aspect of Clause 11.1.1 is that Clause (v) and (vi) provide, that if the company abandons the operations of the expressway for more than 60 consecutive days, without the prior consent of YEIDA and the act of the company in repudiating the agreement or otherwise evidencing an intention not to be bound by the agreement shall also be treated

as concessionaire's event of default. Clause 11.1.2 provides for curing the Concessionaires event of default on notice by YEIDA. However, Clause 11.1.4 provides that on failure on the part of the company to cure the default the YEIDA shall be entitled to terminate the agreement, by giving 60 days notice in writing to the company. Clause 11.1.5 provides the consequences of termination of the agreement under Clause 11.1.4. Clause 11.1.5.1(a) provides that in case of termination under Clause 11.1.4 the rights of the company in relation to the "land for development" transferred to it to the extent such land has been transferred to it shall not be affected, and shall survive. Similarly Clause 11.2.4.1(a) provides that in case of termination of agreement by the company due to TEA event of default, the rights of the company in relation to the "land for development" transferred to it to the extent such land has been transferred to it, shall not be affected and shall survive.

20. Shri Rai submits that this Court in *Pooran and Ors. v. State of U.P. and Ors. v. State of U.P. and Ors. (Dadri Project case)* has relied upon *Pratibha Nema and Others Vs. State of M.P. and Others*, and has held that the essential condition for acquisition for public purpose is that, the cost of acquisition should be borne, wholly or in part, out of public funds. The main and the decisive distinction lies in the fact, whether the cost of acquisition comes out of public funds wholly or partly. In some cases even a token contribution has been considered to be sufficient compliance with the second proviso to Section 6 of the Act. In *Pratibha Nema's* case it was held: (T)he main distinction between acquisition for a company and acquisition for a public purpose is the source of funds to cover the cost of acquisition as provided in the agreement." He has relied upon *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, and *Devinder Singh and Ors. v. State of Punjab and Ors.* (2008) 1 SCC 728 in support of his submission.

21. In the present case Shri Rai submits that the choice of the land and its transfer is at the request of the company which shows that the acquisition is essentially for the company. The user of the land is also at the sole discretion of the company. The company under the agreement is to retain the land and its right will survive even if the agreement is terminated due to events mentioned therein, which also includes any material adverse breach of the agreement by the company which has caused material adverse effect on the performance of the project, and the act of the company in abandoning the operations of the expressway for more than 60 consecutive days without prior consent of YEIDA, and also the act of the company in repudiating the agreement or otherwise evidencing an intention not to be bound by the agreement. Shri Rai submits that the different uses of the land including the use for commercial, amusement, industrial, institutional and residential, in Clause 4.4 of the agreement and is contrary to Section 6(2)(f) of the U.P. Industrial Area Development Act 1976, also goes to show that the acquisition is for the company.

22. Shri Rai submits that the judgment in *Balbir Singh and Anr. v. State of U.P.*

and Ors. 2010 (1) ALJ 472 challenging land acquisition for expressway to be constructed by the company on the ground that the acquisition was for the company and not for YEIDA has been wrongly decided by the Court. The Bench hearing the matter has not considered the provisions of the agreement. The observations, in paragraphs 65, 81, 88 that the land has to come back to the authority and that the terms are merely to execute the project within the stipulated time, have been made without going into the terms, which are heavily loaded in favour of the company. Clauses 3.1, 3.6 of the agreement giving rights of 36 years on the expressway, and Clauses 4.3(1) and 4.3(c) providing for transfer of the land for development, free from all encumbrances, on lease for 90 years, and that the rent to be paid annually, as well as Clause 4.5 providing that the rights of sub lessees/end users shall not be affected by the termination of the agreement, were not considered by the Court.

23. Shri Rai further submits that the penalty Clauses have not taken care of the interest of the YIEDA and the State. They are entirely in favour of and are benefiting the company. Clauses 11.1.4 and 11.1.4.1 with 11.2.4.2 would show that in case of termination the land for development has to be retained by the company. He submits that in case the termination of the contract, even at the fault of the company itself, it will benefit by exclusive transfer and retaining the land for development on the acquisition cost. He would submit that the ratio in Balbir Singh's case is not attracted to the acquisitions for land for development and that the Court without visualising the effect of the agreement and its terms on the land for development can offer no other conclusion, but that the land was required only for the company and not by the State. The Court did not appreciate the ratio of Pandit Jhandu Lal and Others Vs. The State of Punjab and Others, and Pratibha Nema's case, and adopted an entirely incorrect approach in deciding whether the acquisition is for the company or for public purpose and whether the costs of acquisition in part, or wholly is being paid out of the public funds. He has also relied upon Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others,

24. Shri Rai submits that Section 41(5) of the Act provides that the agreement shall provide the terms on which the public shall be entitled to use the work if the acquisition is for construction of any work not referred in Section 41(4) and Section 41(4A). The acquisition can be for a company only, if there is permanence and the government would have to divest itself of all rights in and over the land. He has also referred to paragraphs 71, 84, 85 and 86 of the judgment and submits that in Balbir Singh's case the Court misread the judgment in Pratibha Nema's case and ignored material observations of the Apex Court. In cases of acquisition of land by the State compensation in all cases is paid to the land holders by the Collector or is deposited by the Collector in the Court u/s 31(2). Even in the case of acquisition for a company the compensation is paid to the land holder by the Collector. Section 41(1) stipulates that the agreement with the company has to provide for payment of cost of acquisition to the appropriate Government, and thus even in cases of acquisition of a company

under Part VII of the act the compensation is paid through Collector and not directly by the company. The appropriate government or the authority holding the compensation amounts acts as a trustee. The payment of compensation amount deposited by the company is at the sole discretion, and control of the body is contrary to the statutory provisions.

25. Shri Rai would submit that the observations of the Court in Balbir Singh's case that the State owned Corporation had to bear the cost of acquisition and as a first step, it made the payment of Rs. 1.5 crores has lost sight of the stand of the Authority, that the amount deposited by the company through cheque was towards advance lease premium in terms of MOU. The Court, therefore, was not right in recording its opinion that there was no reference in the MOU regarding compensation amount and there is no reason to presume that the amount was deposited by the company as advance compensation amount. The lease premium is the property of the lessor. The Apex Court in Pratibha Nema's case had observed that the genesis of the fund is not the determinative factor, but its ownership in praesenti that matters. The amount deposited by the Company in the present case was towards lease premium. It was not the property of the authority or the government. They are merely trustee of the same holding for the farmers holders. Shri Rai submits that the reasoning given in Balbir Singh's case that the land was not needed by the company may be relevant for acquisition of the land for expressway under the agreement. The same cannot be applied to the land for development as the situation in both the cases is different. The land for development is to be acquired and transferred under Clause 4.3(b) as per choice and request of the company, in such a manner that the company is entitled to achieve 150 FAR on such land (Clause 3.3 of the agreement). The State Government has also admitted in the counter affidavit that the land for development is to be provided to the successful bidder so that the project become viable. The company is allowed to build the project from its own sources without any financial assistance. The State Government was conscious that financial liability of the project cannot be achieved from toll collection alone and for that reason the successful bidder was to be granted the right to develop land parcels. The acquisition was, therefore, to re-compensate the company of the costs incurred by it in the constructions of the expressway and not the construction of work which was to prove useful to the public as it is provided u/s 40(1)(b) of the Act.

26. Shri Rai submits that the observations in Balbir Singh's case that no application was made by the Company under Rule 4 of the Rules loses sight of the fact that in the present case the land for development was to be acquired as per the request and choice of the company under Clause 4.3(b) of the agreement. The agreement provided that the company shall choose the land and request the Government to acquire the same. It was thus fallacious to argue that the acquisition of land for development is not for the company and that no application was made by the company for acquisitions. If the total cost of the acquisition is being borne by the company, and acquisition is for the company,

the procedure prescribed in Part VII as well as the Rules was to be complied with and the factors enumerated in the said provisions had to be considered. Shri Rai relies upon *Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others*, referring to paragraphs 11 to 15 and 19 of the judgment. Shri Rai submits that for acquiring the land u/s 6 of the Act a satisfaction is necessary by the State Government. Unlike Section 4 in which the State Government is only required to be satisfied that the land is needed or is likely to be needed for public purpose. Paragraphs 15, 19 and 23 of the judgment relevant for the purposes of the case are quoted as below:

15. Reading the Act and the Rules and keeping in view the scheme of the Act, it is apparent, in our opinion, that before the issuance of Section 4 notification, there is no requirement as such of compliance with the procedure contemplated by Rule 4 of the Rules. We are therefore unable to subscribe to the view that enquiry by Rule 4 must precede the issuance of notification u/s 4(1) of the Act. Furthermore as indicated before certain matters which are required to be done under Rule 4 cannot be done because the officer or the person authorised by him would have no authority unless notification u/s 4 is issued.

19. In our opinion when this Court observed that the report of the enquiry under Rule 4 was a factor to be taken into consideration and "to issue thereafter Section 4 notification" was by general observation. It is undoubtedly true that a notification u/s 4 can be issued after enquiry under Rule 4. But under the scheme of the Act, the converse is not correct i.e., the enquiry under Rule 4 must always precede notification u/s 4 of the Act. In that decision this Court analysed the importance of Section 5A and it is after considering the report under Rule 4 and report u/s 5A that notification u/s 6 will be issued. It is undoubtedly true that enquiry under Rule 4(1) must precede action u/s 6 but we do not find reading the said decision of this Court in the context of the facts and circumstances and the contentions urged in that case that this Court laid down any proposition that enquiry under Rule 4(1) must precede issuance of notification u/s 4. Indeed as we have mentioned, before, notification u/s 4 would facilitate the matters, to be enquired under Rule 4(1).

23. On the scheme of the act, we are of the opinion that on a correct interpretation, it is not necessary that enquiry under Rule 4 must in all cases precede issuance of the notification u/s 4 of the Act. In an appropriate case if it is possible, enquiry under Rule 4(1) may be held before the issuance of the notification u/s 4. But it is not mandatory requirement that it must precede before the issuance of the notification u/s 4.

27. Shri Rai submits that it is not necessary for the acquisition to be acquisition for the company only, if the company was not in existence when the project was conceived. In the present case the company was in existence at the time of notification u/s 4 of the Act and that the lands were being acquired for the development through impugned notifications at the choice of the company. He would submit that the advertisement dated 23.5.2001 issued when the project

was conceived would show that the project was conceived/offered as a joint venture project with 24% equity with the authority and 76% equity with the joint venture partner and the expressway was to be completed within three years. The bids were rejected, and a fresh advertisement was issued on 3.11.2002 which provided that though the project is a joint venture project with 25% equity with the authority, and 75% equity with the joint venture partner, but the project may be taken by the bidder exclusively without any equity participation by the bidder, and in the said case the entire cost of Noida-Greater Expressway shall be treated as interest free loan to the JV/SPV. The advertisement provided that the expressway was to be completed in five years. The bid document was prepared in accordance with the second advertisement dated 3.11.2002. The relevant Clauses of the agreement giving the company benefits, were incorporated in the bid document. The respondent-company was not in existence at the time when the project was conceived. But that it was in existence at the time when the second advertisement dated 3.11.2002 was issued.

28. Shri Rai submits that the notifications are vague and are vitiated due to non-application of mind by the State Government to the public purpose. The public purpose to be fulfilled by acquisition of the land is to be decided by the Government as it is a sovereign function. These functions cannot be delegated to a company for the choice of the land to be best suited for its purpose and with no control over either the user of the land or the clause/persons to whom the land can be transferred by the company. The argument can further be tested on the terms in the agreement that the land can be leased out to the company for institutional and amusement purposes also contrary to Section 6(2)(f) of the U.P. Industrial Area Development Act, 1976.

29. Munshi Singh and Others Vs. Union of India (UOI), and Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, in which the Supreme Court held that the public purpose stated in Section 4(1) of the Act has to be particularised. In Clause 4.4 of the agreement, the purposes for one of the uses to which the land can be put to is residential which was held to be vague by the Supreme Court in Mohd. Shafi's case. In Daulat Singh Surana and Ors. v. First Land Acquisition Collector and Ors. (2007) 1 SCC 641 it was held by the Supreme Court that the public purpose may be defined with the guidance taken from Article 39 of the Constitution of India, which seeks to secure ownership and control of the material resources of the community to be distributed as best, to serve the common good and that the operation of the economic system should not be result in the concentration of wealth and means of production to the common detriment. The Supreme Court held approving the observation of Cooley in Constitutional Limitations that compulsory acquisition of property is applicable only in those cases where private property is wanted for public use, or demanded by the public welfare. An activity, however, beneficial to the people and however useful cannot be regarded as public service, if it is of a type which may be carried on by private individuals for distinct profit motive. In the present case the land for development, it is submitted, is being acquired and transferred to the

company for any public purpose but for construction cost of the expressway to maintain financial viability of the project as according to the agreement the project cost cannot be recovered from toll collection alone. The land, therefore, is being acquired for sale of the land to end users by the company for profit motive. The provisions of sub lease of the land without any consent or approval or payment of any charges and the freedom of transfer under Clause 4.4 to the highest bidder as a real estate agent to earn profits for recompensating the company for constructions of the expressway cannot be a public purpose. The State Government or YEIDA, will completely loose control over the acquired land for its user, area allocation and the persons to whom the land can be transferred.

30. Shri Rai submits that the socio-economic aspects including the clearance from Ministry of Environment and Forest vide notification dated 14.9.2006 by the Ministry and prior environmental clearance has not been obtained as required in the notification.

31. Shri Rai has thereafter challenged the notifications on the ground that there is no urgency for exercising powers u/s 17(4) and to dispense with enquiry u/s 5A. He states that there is no urgency to acquire the land for development for the reasons as aforesaid for profit motives and to re-compensate the company for constructions of expressway. He relies upon Union of India (UOI) and Others Vs. Mukesh Hans etc., Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, and submits that there was no such urgency or emergency to dispense with enquiry u/s 5A for protecting the rights of the individual land owners. The development of the land for industrial and residential purpose does not require dispensation of such enquiry.

32. Shri Rai has read out the details of the agreement to demonstrate that the concessions are totally flawed. The "COD" has been defined as the date on which expressway substantially completed. The "construction period" means the period of seven years and the "schedule completion date" is the last date of construction. In between there is no provision of grant of substantial completion certificate after the tests are carried out to determine expressway completion by TEA/YEIDA. He submits that if the date on which the expressway is substantially completed is not achieved within seven years, on the default of the company, the concessions period has to be reduced by the period of delay and thereafter refers to Clause 4.6 of the agreement which provides that if the land is not made available to the company at stages 1, 2 & 3, according to the schedule mentioned in Clause 4.1 and 4.2, for any reason other than which are to be attributable to the company, the TEA/YEIDA shall at its discretion, reimburse the company additional cost and loss of revenue on account of such delay or the company shall be compensated by suitably extending the concession period. Shri Rai refers these Clauses to show that the company is expected to construct expressway within seven years, the commercial operations date and the concessions period of 36 years will start from the substantial completion certificate given to the company after tests has been carried out by TEA/YEIDA

and thus though the seven years period is provided, with extensions to be granted, but no time limit has been fixed for developing the land, acquired under the head "land for development". These Clauses show that the time is not the essence so far as land for development is concerned and no time limit has been fixed for completing or even starting the development work. The concession period can be extended or the company can be reimbursed for the loss under Clause 4.6, if the land is not provided. These Clauses clearly separate the acquisition of land for expressway and the land for development for which there could be no urgency, as contemplated in Section 17(4) so as to dispense with the enquiry u/s 5A of the Act.

33. Shri Rai submits that the land for development is not an integral part of the project. It is a separate project for which the acquisition was only for the company and thus the acquisition for public purpose by the State is bad in law and in any case the provisions of Section 5A could not be dispensed with by applying Section 17(4) of the Act.

34. Smt. Sarita Shukla, appearing in Writ Petition No. 53938 of 2009 as her leading case, represents 28 petitioners of district Aligarh, challenging notifications u/s 4/17 dated 31.3.2009 notifying acquisition of 72.5249 hectares of land, and the notifications u/s 6/17 dated 28.5.2009 dated 28.5.2009 declaring acquisition of 68.7492 hectares of land, submits that the right to property may not be a fundamental right, yet it is a constitutional right under Article 300A of the Constitution of India, and has a flavour of human rights under Article 21 of the Constitution of India. Referring to State of Punjab and Another Vs. Gurdial Singh and Others, she relies upon the observations of Justice V.R. Krishna Iyer in para 16 of the judgment in which he stated that it is fundamental that compulsory taking of a man's property is a serious matter, and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry u/s 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power.

35. Smt. Sarita Shukla submits relying upon Munshi Singh and Others Vs. Union of India (UOI), that Section 5A gives a substantial right Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, When a person's property is being threatened with acquisition, that right cannot be taken away, as if by a side wind. Sub-section (2) of Section 5A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further enquiry he is to make a report to the Government containing his recommendations on the objections. The decision of the appropriate government on the objection is then final. The declaration u/s 6 is to be made after the

appropriate government is satisfied, on a consideration of the report, if any, made by the Collector. The legislature has made complete provisions for the persons filed objections against the proposed acquisition and for disposal of objections. It is only in cases of urgency that special powers have been conferred on the appropriate government to dispense with the provisions of Section 5A, u/s 17(4) of the Act.

36. Smt. Shukla would submit that large tracts of fertile agricultural land is sought to be acquired by the impugned notifications. The farmers will be deprived of their livelihood, which is based primarily upon agriculture. She has referred to the observations of the Supreme Court in Babu Ram and Another Vs. State of Haryana and Another, and Mahendra Pal v. State of U.P. (2009) 4 AWC 3464 (SC) in submitting that a public purpose, however, laudable, it may be, is not sufficient to take aid of the extraordinary powers u/s 17 of the Act. The urgency should be unexpected, exceptional or extraordinary such as earthquake, floods or some specific time bound project where the deal is likely to delay the purpose nugatory or infructuous. In Babu Ram (supra) the Supreme Court observed that in Gurdial Singh (supra) and in Om Prakash (supra) a great deal of importance has been assigned to the right of the citizen u/s 5A of the Act. Such right was elevated to the status of a fundamental right and thus a great deal of care has to be taken by the authorities before resorting to Section 17(4) of the Act and that they have 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. In Mahendra Pal (supra) after referring to Mukesh Hans (supra) and Krishan Lal Arneja (supra) the Supreme Court observed that where an exception carved out from the main provision as a result of depriving a citizen of the property particularly having regard to the fact that if it is considered to be a human rights procedural safeguards laid down therefore must be scrupulously complied with. The land acquisition is an expropriatory legislation deserves strict constructions. The Supreme Court referred to Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, Devendra Singh and Ors. v. State of Punjab (2008) 1 SCC 728 and City Montessori School v. State of U.P. and Ors. 2009 (2) Scale 740.

37. Shri Uma Nath Pandey submits that the provisions of the U.P. Industrial Area Development Act, 1976, and the Regulations made thereunder in the year 1991, were not followed while notifying the areas for development by the "Yamuna Expressway Industrial Development Authority (in short, "YEIDA"). He submits that the villages were not notified after following the procedure provided under the Act. The objections were not invited and that notifications were discriminatory. He would submit that unless the industrial development area of YIEDA is notified, the acquisition for the purposes of YIEDA for development is bad in law.

38. Shri Satish Chaturvedi, Additional Advocate General appearing for the State of U.P, submits that the State for the development of the certain areas in the

State, and for industrial and for urban development as well as for other matters connected therewith issued Notification No. 667/77-4-2001-3(N)/2001 dated 24.4.2001 declaring such areas as industrial area and called it "Taj Expressway" and constituted "Taj Expressway Industrial Development Authority" u/s 3 of the U.P. Industrial Area Development Act, 1976. The name of the Authority was changed by the notification dated 11.7.2008 into "Yamuna Expressway Industrial Development Authority" (in short "YEIDA"). Initially eight villages in District Gautam Budh Nagar were notified under the Authority. By subsequent notification more villages in five districts namely, Gautam Budh Nagar, Aligarh, Agra, Mathura and Mahamaya Nagar (Hathras) were included. The Authority u/s 6 of the Act of 1976, is authorised to perform various functions to secure the planned development of the area, which includes allocation and transfer by way of sale or lease or otherwise, plots of land for industrial, commercial, residential or other purposes. Section 7 authorised the Authority to sale, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the authority in the notified area.

39. The project was conceived by the State of U.P. in 2001 as an integrated project involving construction of an access controlled expressway, stretching over about 160 kms from Noida to Agra as well as development of 25 millions square meters of land along the said expressway. Pursuant to the policy the YEIDA invited offers from interested parties to implement the project. The advertisements were issued in various newspapers including "Economic Times" dated 23.5.2001. The bids were received by the authorities, but later on rejected. The matter was again considered by the State and a fresh advertisement was issued inviting offers in November, 2002. The advertisements were carried out in daily newspapers including "Times of India" dated 3.11.2002.

40. In the advertisement dated 23.5.2001, the proposal was notified as follows:

The proposed Expressway would be of about 160 km length and would considerably shorten the distance between New Delhi and Agra thereby reducing the travelling time to about 100 minutes. The estimated cost of the project is in the range of US \$ 350 million. First phase of the Expressway between Noida Toll Bridge and Greater Noida (about 25km) is already under construction.

The Expressway would pass through virgin area along with river Yamuna. A band of about 500 meters width of land in addition to the 100 meters for the Expressway, would be offered along the corridor for commercial, amusement, industrial as well as township development, as an integral part of the project.

41. In the fresh advertisement dated 3.11.2002 the intention about the expressway was notified as follows:

Proposals are invited for the development of a Techno Economic Feasibility Report (TFFR) and Detailed Project Report (DPR), arrangement of finances, construction, and operation of a six lane super expressway between NOIDA and Agra.

The proposed expressway would be about 160 km length and would considerably shorten the distance between New Delhi and Agra, thereby reducing the travelling time to about 100 minutes. The estimated cost of the project is in the range of US \$ 350 million. The first phase of the expressway between the NOIDA Toll Bridge and Greater NOIDA (about 25 km) is already under construction and likely to be commissioned by December 2002.

The expressway would be through virgin area along the river Yamuna. A band of about 500 meters width of land, including the 100 meters for the expressway, at five or more locations of which one location will be in the NOIDA/Greater NOIDA area along the expressway and balance for commercial, amusement, industrial, institutional and residential development would be offered on acquisition cost along the corridor as an integral part of the project.

42. The scheme proposed to build expressway of 160 kms and for this a band of about 500 meters width of land including 100 meters for expressway at five or more locations of which one was located in Noida/Greater Noida area was offered on acquisition cost along the corridor as an integral part of the project. The terms of the bidding in Clauses 1.5, 1.6, 1.9, 1.10 and 3.4 in Section II (Terms and Conditions of Bidding) provided:

1.5 The expressway would pass through the virgin area, along the River Yamuna. Land including 100 meters for the Expressway at five or more locations of which one location shall be in Noida or Greater Noida with an area of 5 million square meters along the expressway for commercial, amusement, industrial, institutional and residential development would be offered on acquisition cost on lease for the period of 90 years. The land shall be transferred to the JV/SPV as per its request and choice, subject to the availability and the provision of Para 1.6. These sites as per the respective Area Master Plan will have 150 FAR. The land area for the said development will be 25 million square meters.

1.6 The JV Company will be given two options for "schedule for land release". The JV company is required to select one of these two options and the selected option shall get enshrined in the concession agreement.

Option I:

The 50% of land for development would be made available within six months of financial closure and the remaining 50% land shall be made available within 12 months thereafter.

Option II:

In this option, the project is proposed to be developed in three phases:

Phase I: Expressway Stretch between Greater Noida & Taj International Airport

Phase II: Expressway Stretch between Taj International Airport and an intermediate destination between Taj International Airport & Agra.

Phase III: Expressway Stretch between intermediate destination & Agra.

The land for development shall be released as per the following three stages:

Stage 1: 10% land (250 hectares) for development would be made available after JV Company makes financial arrangements for the Phase-I, to the satisfaction of TEA.

Months of Stage 1, provided the JV Company

? Finalize the DPR/TEFR study

? Commence the construction of Phase-I

? Makes financial arrangements for the Phase-II, to the satisfaction of TEA.

State 2: 10% land (250 hectares) for development would be made available within 6 (six) months of stage -1, provided the Concessionaire

- finalizes the DRP/TEFR study

- Commences construction of Phase-1

- Makes financial arrangements for Phase-2 to the satisfaction of TEA

Stage 3: Balance 80% land (2000 hectares) for development would be made available within 12 (twelve) months of Stage-1, provided.

? TEA accepts the DPR/TEFR study prepared by the J V Company

? TEA is satisfied with the physical progress of Phase-1 and Phase-2

? The JV Company makes financial arrangements for the Phase-3, to the satisfaction of TEA.

1.9 TEA invites bids from parties with sound technical and financial strength for the project. At the end of the Concession Period, all assets and receivables relating to the Expressway shall stand transferred/assigned to the TEA at nil value and the private sector partner in the JV company/SPV would divest its stake in favour of TEA at original face value i.e. par value and not nil value. After completion of 90 years, all rights of 25 million sq. meters land given for the development, shall stand transferred to TEA, including the right or renew the lease of this or part of this land. The alignment of the Expressway between Greater Noida and Agra shall be finalized by the JV/SPV in consultation with TEA.

1.10 The land offered by TEA along the expressway for development on lease at a premium equivalent to acquisition cost and lease rent of Rs. 100/- per hectare per year for a period of 90 years. The JV company/SPV could further lease out the developed/underdeveloped land to sub-leases/end-users without payment of any charges/fee etc. The rights of sub-lessees/end-users shall not be affected at the expiry of concession period and subsequent renewals shall be granted by TEA on standard Terms and Conditions.

3.4 The bid variable for the project is only concession period. The concession period will commence after 7 years from the date of signing of Concession Agreement. At the end of this concession period, all assets and receivables related to the Expressway, shall stand transferred/assigned to TEA at nil value and equity of the selected parties shall be transferred on par value to TEA.

43. The entire project including construction of expressway and development of the land parcels is an integrated project for development of the land along with expressway for commercial, amusement, industrial as well as townships. The State Government not only desired to provide a fast moving corridor for traffic between Noida and Agra, but also development of land along the said expressway.. The selected bidder as per the project was to build the expressway from its own resources without any financial assistance. The State Government was conscious of the fact that the financial viability of the project could not be achieved from the toll collection alone. It was necessary that the project be designed to grant a right to the successful bidder, to collect toll as well as develop land parcels. After completing the bidding process a concession agreement dated 7.2.2003 was executed with Jai Prakash Industries Ltd. to construct expressway and to develop the land along the expressway on the "Build, Operate and Transfer" basis. The project was defined:

"Projects" means preparation of TEFR and DPR, design, engineering, financing, procurement, construction, operation and maintenance of the Expressway and management of land for development in accordance with the provisions of this agreement and shall include all works relating to or in respect of the expressway and the land for development.

44. Shri Satish Chaturvedi has relied upon various Clauses of the concession agreement dated 7.2.2003 to show that the land for expressway is to be provided on lease for a period of 36 years, whereas the land parcels for development are to be provided on lease for a period of 90 years. The premium for transferred land is to be equivalent to the acquisition cost and lease rent of Rs. 100/- per hectare per year. The relevant Clauses of the agreement dated 7.2.2003 are quoted as below:

Chapter I

1.0 Definitions

"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 Operation Date (COD).

Chapter III

Grant of Concession

3.1 Subject to and on the terms and conditions set forth in this agreement, TEA hereby undertakes to cause Government of U.P to grant to the Concessionaire,

and the Concessionaire hereby accepts the concession for a period thirty six years commencing from the COD including the exclusive right, license and authority during the subsistence of this agreement to implement the project.

3.3. The Concessionaire shall be granted, by TEA rights for land development of 25 million sq. meters of land along the proposed Expressway for commercial, amusement, industrial, institutional and residential development. The land for the purpose of development shall be provided by TEA along the Expressway at five or more locations of which one location shall be in Noida or Greater Noida with an area of 5 million of sq. meters. The aforesaid land for development shall be in addition to the land for construction of Expressway.

3.6 The Concession Period shall commence on COD 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 COD is not achieved within 7 (seven) years or such extended period as may be approved by TEA, 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 COD.

Chapter-IV

LAND

4.1 Land for construction of Expressway shall be provided by TEA to the Concessionaire, generally in a width of 100 meters 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 3 stages:

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.

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

b. The land shall leased for a period of starting from the date of transfer till the end of Concession Period 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. 100.00 (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.

4.2 The land for development shall be released as per following 3 stages.

Stage 1: 10% land (250 hectares) for development would be made available after concessionaire makes financial arrangements for Phase-1 to the satisfaction of TEA.

Stage 2: 10% land (250 hectares) for development would be made available within 6 (six) months of stage-1, provided the concessionaire

- finalizes the DPR/TEFR study
- commences construction of Phase-1
- makes financial arrangements for Phase-2 to the satisfaction of TEA

Stage 3: Balance 80% land (2000 hectare) for development would be made available within 12 (twelve) months of stage-1, provided

- TEA accepts the DPR/TEFR study prepared by Concessionaire.
- TEA is satisfied with the physical progress of Phase-1 and Phase-2.
- Concessionaire makes financial arrangements for Phase-3 to the satisfaction of TEA.

For the purpose of satisfaction of TEA in respect of Financial Arrangement as aforesaid, the Concessionaire shall submit phasing of estimated expenditure, source of funds including own funds and copies of communication from the lenders in case of debt by way of term loan, NCD or any other instrument showing their intention for providing the debt.

4.3 Land for development shall be transferred by TEA to the Concessionaire free from all Encumbrances on following terms and conditions:

- a. It shall be on lease for a period of 90 (ninety) years from the date of transfer through such lease deeds as may be mutually agreed between the parties.
- b. The land to be transferred shall be as per the request and choice of the Concessionaire subject to availability, in such a manner that the Concessionaire is entitled to achieve 150 Floor Area Ratio (FAR) on such land. If due to local bye laws or other statutory provisions, it shall not be possible to achieve 150 FAR, then TEA shall evolve suitable mechanism, as may be mutually agreed between the TEA and the concessionaire, so as to enable the concessionaire to achieve 150 FAR.
- c. The sole premium of the transferred land shall be equivalent to the acquisition cost plus a lease rent of Rs. 100.00 (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 rent shall be payable annually for 90 (Ninety) years from the date of transfer of land.

45. It is submitted by Shri Chaturvedi that, the actual work could not commence immediately and was delayed due to several complaints. The Commission of Enquiry under the Commission of Enquiry Act, 1956 was appointed and submitted its report. In *Ashutosh Srivastava v. State of U.P. and Ors.* Writ Petition No. 30322 of 2007 the project was challenged on various grounds in public interest. The writ petition was dismissed by the judgment and order dated 14.3.2008. The prayer to declare the concession agreement as illegal, null and void was rejected. The Court upheld the agreement including the development of five parcels of the land to be allotted at five different places under the project. The Court did not accept the plea that the grant of land for development has been offered to a company on a platter. The proceedings for acquisition of the land for "Yamuna Expressway" was thereafter challenged in a batch of writ petitions led by Writ Petition No. 48978/2008 *Balbir Singh and Ors. v. State of U.P. and Ors.* The writ petition was dismissed on 5.10.2009. Another batch of writ petitions led by Writ Petition No. 31314 of 2009 *Nand Kishore Gupta and Ors. v. State of U.P. and Ors.* was dismissed on 30.11.2009. The Court did not accept the plea that the land has been acquired for the company and therefore the provisions of Chapter VII of the Act should have been followed and that there was no urgency to apply Section 17(4) and to dispense with enquiry u/s 5A of the Act.

46. Shri Satish Chaturvedi submits that all the plots acquired by the State Government for YEIDA for development are within the notified areas of the YEIDA for the purposes of planned development. The land has been acquired for development under the Yamuna Expressway Project through YEIDA. He submits that the objections that the land has been acquired for the benefit of the private company and of malafides have been rejected in *Ashutosh Srivastava's* case (*supra*) in which this Court held that the project is designed to serve public purpose. It is likely to deliver considerable benefits to the State and its citizen. The provisions of Part VII of the Land Acquisition Act, 1894 are not attracted and that in the judgments to such acquisition the Court must keep in mind the larger public interest to be served by the Project.

47. Shri Chaturvedi relies upon the Supreme Court judgment in *State of Karnataka and Another Vs. All India Manufacturers Organization and Others*, in which it was held that the pieces of land acquired from the places away from the main alignment of the road or in excess of that required for the road were part of the Project. In a similar project under challenge in Supreme Court providing for expressway and land for development between Bangalore-Mysore it was observed that the Project was an integrated projected intended for public purpose and irrespective of where the land was situated, so long as it arises from the terms of agreement. There was no question of characterizing it as

unconcerned with a public purpose. In the present case he submits that the project is integrally connected both forward and backward and is financially tied up. The intention of the Government is to provide an expressway as well as development of five regions along side the corridor of the expressway. Both the purposes are public purposes. Merely because the authority chose to implement the project through a third party agency, the acquisition would not become a colourable exercise of power. The intention of the State Government and YEIDA was clear. There is no additional benefit provided to the company other than what was advertised and contained in the bid document.

48. With regard to the choice of land by Jaiprakash Industries Limited at four places along side the expressway, Shri Chaturvedi submits that the land parcels fall within the notified areas of YEIDA as industrial development area notified in April and August, 2001. One of the land parcels was designated from the beginning in Noida/Greater Noida. The selection of four locations from out of the already notified industrial development area would not make the choice of sites as a colourable exercise of powers, nor will change the nature of acquisition. The project area was already decided. A cumulative reading and consideration of the fact, clearly established that the intention of the acquisition being vague or in colourable exercise of powers is not correct.

49. Shri Chaturvedi submits replying to the arguments of exercising powers by the State u/s 17(4) of the Act dispensing with the hearing u/s 5A of the act that the construction of Yamuna Expressway and development of land (for which the land is acquired) is a single and integrated project. Its financial viability is based upon the grants of rights to the concessionaire to develop the land. The cost of expressway is to be entirely borne by the company and no financial assistance is provided by the State Government. The project is interlinked. The State Government had no option but to proceed with the acquisition of land for Expressway as well as the land for development in a phased manner. The project is an integrated whole with two components, namely the expressway and land for development. These two components do not survive nor stand independently on their own. The reasons for invoking provisions of Section 17 were primarily the same for both the expressway and the land for development. In *Nand Kishore Gupta and Ors. v. State of U.P. and Ors.* (supra) this Court has already upheld the invoking the provisions u/s 17(4) of the Act dispensing with the procedure u/s 5A.

50. Shri Chaturvedi submits that the land for expressway is to be given on a lease of 36 years and land parcels for development are to be given on the lease of 90 years. The land does not vest in the Concessionaire, but is only provided on lease. At the end of the concession period and the lease, the assets will revert back to the acquiring body. The land for the project is being provided by the Government upon acquisition for implementation of the project conceived by the Government. Jaiprakash Industries Ltd. is only paying premium and annual rent to the acquiring body. The premium was provided to be equivalent to the

acquisition cost of land as the concession agreement was executed in 2003, at a time when the land had not been acquired and the Government did not have the actual cost outlay prepared for the project. The premium was provided to the equivalent to the cost of acquisition as the means for providing machinery on a rough estimate.

51. In reply to the argument that the acquisition is primarily for the purposes of providing the land to a company, Shri Chaturvedi has relied upon decisions in Balbir Singh's case (supra) and Nand Kishore Gupta (supra). He submits that in the year 2002 when the agreement was signed no land was acquired by the State Government. It was obligation of the State Government to provide the land for the project. The concession agreement provided that the land will be provided at a premium which was to be equivalent to the acquisition cost of land. Since the land is being leased to the company, it has to be on payment of premium of the lease rent. The cost was not conceived and therefore, the premium was projected to be the acquisition cost of the land. The premium is being paid by the company to YEIDA, which will in turn disburse the estimated acquisition cost. The premium once paid to YEIDA becomes its own fund. It is for the YEIDA to choose and decide as to how it utilises the fund. The moment the premium comes to the YEIDA it stands credited to its account, and it partake the character of public revenue. It is from this public revenue that the compensation is paid to the land owners. Shri Chaturvedi submits that since the payment of compensation is from public revenue the acquisition is not for the company, nor can be traceable to the provisions of Part VII of the Act and relies upon explanation 2 to Section 6 of the Act which provides that where the compensation is to be paid out of the funds of the Corporation owned and controlled by the State, the compensation shall be deemed to be the compensation paid out of public revenues.

52. It is submitted that in Pratibha Nema (supra) in paragraphs 23, 24, and 25, it was held that once the amount paid towards advance lease premium, may be on a rough-and-ready basis, is credited to the account of the Nigam, it becomes the fund of the Nigam and such fund when utilized for the purpose of payment of compensation, wholly or in part, satisfies the requirements of the second proviso to Section 6(1) read with Explanation 2. The genesis of the fund is not the determinative factor, but its ownership in praesenti is what matters. A similar view was taken by the Supreme Court in Naihati Municipality and others Vs. Chinmoyee Mukherjee and others, in which the Supreme court held that the second proviso to Sub-section (1) of Section 6 provides that no such declaration shall be made unless the compensation is to be paid by a company, or wholly or partly out of public revenues or some funds controlled or managed by a local authority. The municipality is a local authority and the funds are controlled or managed by the municipality. The fact, that at the relevant point of time the municipality did not have necessary funds to meet the cost of acquisition, on which they have requested hawkers' union to contribute the money and consequently Rs. 3,90,000/- came to be handed over to Municipal Commissioner, who had deposited the funds of municipality, the amount had formed and fused

into an integral part of the municipal funds. The Government had imposed a condition that the money contributed will be used only for the purposes of the cost of acquisition. The amount had thus become part of the funds of the local authority.

53. Shri Chaturvedi submits that the land use prescribed is to be in accordance with the relevant provisions of Master Plan and other Regulations. The Concessionaire is required to obtain all clearances, and permission in accordance with the laws. The declaration in the notifications clearly indicates that the nature and purpose of the acquisition is the public purpose. The declaration in the notification that the land will be utilized for development of the land parcels under the Yamuna Expressway project indicates with sufficient clarity, the purpose of the project and the same is liable to be upheld. He relies upon *Aflatoon and Others Vs. Lt. Governor of Delhi and Others, and Bhagat Singh v. State of U.P.* 1992 (2) SCC 384 in submitting that the acquisition for public purpose, and land use are different from another. The former is not dependent upon the other. There is no vagueness in the notifications to be faulted. Shri Chaturvedi submits that there is no substance in the challenge to the acquisition made for the development of the State.

54. Shri Shashi Nandan, Senior Advocate assisted by Shri Ramendra Pratap Singh appearing for YEIDA has raised more or less same arguments in reply to the challenge to the notification. In addition he submits that the Clauses of the concession agreement make it clear that the project is integrated and cannot be read separately. He has also placed reliance upon *State of Karnataka and Another Vs. All India Manufacturers Organization and Others*, of the judgment quoted as below:

In our view, this was an entirely misconceived argument. As we have pointed out in the earlier part of our judgment, the project is an integrated infrastructure development project and not merely a highway project. The project as it has been styled, conceived and implemented was the Bangalore, Mysore Infrastructure Corridor Project, which conceived of the development of roads between Bangalore and Mysore, for which there were several interchanges in and around the periphery of the city of Bangalore, together with numerous developmental infrastructure activities along with the highway at several points. As an integrated project, it many require the acquisition and transfer of lands even away from the main alignment of the road.

55. Shri Shashi Nandan submits that in the judgment in *Balbir Singh's* case (*supra*) this Court had considered and rejected the argument that the acquisition is for the company and thus Chapter VII of the Act applies. He relies upon observations of the Court in which relying upon *Sooraram Pratap Reddy (supra)* the Court held that in case of integrated and indivisible project, the project has to be taken as a whole and must be judged whether it is in the larger public interest. It cannot be split into different component and to consider whether each and every component will serve public good. A holistic approach has to be

adopted in such matters.

56. Shri Shashi Nandan submits that the compensation amount has been deposited with the office of the Special Land Acquisition Officer by the YEIDA. The details of the deposits of the compensation amount upto 22.5.2009, have been given in a chart as follows:

-----	Date	Amount
Particulars -----	28.2.2009	
14,00,00,000.00 10% acquisition cost and 10% compensation amount		
-----	12.5.2009	
48,92,58,560.00 70% compensation		Amount
-----	21.5.2009	
5,30,87,500.00 According to the National Rehabilitation Scheme, 2003.		

57. Shri Navin Sinha, Senior Advocate assisted by Shri Yashwant Varma appearing for the Jaypee Infratech Limited (the company) submits that the company is the concessionaire for the project broadly called as "Yamuna Expressway Project" envisaging the construction of six lane expressway connecting Noida to Agra stretching over approximately 165 kms. The project further envisages the development of the five land parcels along the expressway. It is to be implemented on the "Build Operate and Transfer", basis with the nodal agency of the Government of U.P. constituted under the provisions of the U.P. Industrial Area Development Act, 1976. He submits that the project was conceived in 2001. The TEA was constituted in April 2001 and bides were invited in 2001 itself. The tender process did not succeed and was dropped. Subsequently fresh bids were invited in November, 2002 in which 19 bidders expressed interest, and in which the company was ultimately selected. A concession agreement was executed on 7.2.2003 between TEA and the respondent company, pursuant to which the project is to be implemented. The company was required to design, develop, finance, build, operate and transfer the expressway to TEA after expiry of the concession period, with a right to collect tolls for a period of 36 years described as concession period. The company was also granted the right to develop five land parcels for commercial, industrial, institutional, residential or recreational purposes on a lease period of 90 years. The project ran into rough weather right from the beginning. A Commission of Enquiry was constituted by the State Government to enquire into the complaints. A report was submitted by Justice Siddeshwar Narain, Commission of Enquiry in october 2006. It placed before the House of Legislature. The report was accepted by the Government of U.P. A Public Interest Petition filed by Shri Ashutosh Srivastava challenging the project as a malafide attempt to hand over the assets of the State to a private company was dismissed on merit on 14.3.2008. The State Government thereafter started the process of acquisition of land in September, 2007. In the first phase the land for expressway was acquired and in the second the land for development was acquired.

58. The acquisition of land for expressway was challenged in Balbir Singh's case on the ground that the acquisition is for the company. The writ petition was dismissed on 5.10.2009, rejecting the argument that the land has not been acquired for public purpose, and has actually been acquired in colourable exercise of powers to benefit a particular company. Another batch of writ petitions challenging the notifications for acquisition of land for expressway by Nand Kishore Gupta and others was dismissed on 30.11.2009, upholding the exercise of powers u/s 17(4) of the Act and dispensation of enquiry u/s 5A of the Act.

59. Shri Sinha submits that the challenge to the notifications for land for development as an integral part of the project is wholly misconceived. All the arguments against the acquisition such as the project terms are unconscionable, mala fide, only for the benefit of the Company, and in exercise of colourable exercise of power, are covered by the judgments given by the Court.

60. Shri Sinha submits that the chosen concessionaire will not be able to recoup the expenditure required for construction of the expressway from toll collection alone. In order to make the project financially viable, rights for development of land parcels was included in the project concept and design, to achieve the twin objective, firstly the construction of a state of art expressway connecting Noida to Agra and secondly the development of five entirely new regions along the expressway. The basic concept design of the project including the construction of the expressway as well as the rights of development of the land parcels is an integral part of the project. It was part of advertisement both in the year 2001 and 2002, and the bid documents. The bid documents required the interested parties to be experienced in both infrastructure construction sphere and in real estate development. In this background the company made a bid in which 18 other parties had expressed interest.

61. Shri Sinha submits that both the components of the project, namely construction of the expressway and development of land parcels are inextricably interlinked and inter-dependent. The financial viability of the project depends on this basic design. The linkage between the two is evident from the fact that the State requires not just the construction of the expressway but also development of land/regions along the expressway. The release of land for development is linked to the physical progress of work on the expressway. The viability of project cannot be made a subject matter of dispute, or controversy. The project design is not new. A similar design has been used in the course of implementation of the Bangalore-Mysore Corridor as well as for development of Pondicherry Port.

62. Shri Sinha has urged the following arguments in support of the acquisition of land for development:

The project concept being a public purpose, award of contract, its terms are all issues no longer open to challenge having been settled by the judgment of this Court in Ashutosh Srivastava's case.

A direct challenge to the acquisition of land for development was laid in Ashutosh Srivastava's case by alleging that the said acquisition was not for a public purpose and amounted to grant of largesse and was repelled by the Court;

The judgment rendered upon Ashutosh Srivastava's case being a PIL preferred by a bona fide petitioner (as held in the said judgment) was a judgment in rem and would bind all including the present petitioners;

The acquisition is for a public purpose representing a project envisaged and conceived by the Government and would subserve the objectives taken into account by the Government.

The acquisition cannot be described or be held to be an acquisition for a company; the provisions of Part VII of the Act, 1894 are therefore not attracted;

The payment of lease premium by the Concessionaire does not amount to a breach of the requirements of Section 6 of the Act, 1894 nor does it change the character of the acquisition;

The acquisition notifications are not vague and duly set forth with clarity the purpose of the acquisition;

It was not necessary for the Government or the YEIDA to have a specific scheme or plan prior to starting the acquisition proceedings;

There was sufficient material before the State Government to invoke the urgency provisions enshrined in Section 17 of the Act, 1894;

The subjective satisfaction was arrived at by the Government upon relevant material being placed before it;

Considering the advanced stage at which the project had reached and was nearing completion coupled with the fact that a majority of the landholders had already accepted compensation there existed no justification for the Court to interfere with the acquisition.

The interest of a few individuals must yield to larger public benefit and a project which has been unduly delayed resulting in huge cost overruns (the estimated cost of the project having increased from about Rs. 1750 crores to about Rs. 9700 crores) must be permitted to proceed.

63. Shri Sinha submits that in Ashutosh Srivastava (supra) the High Court has accepted that the contract was entered into in accordance with the law. The challenge on the ground of mala fides was rejected. The challenge to the project on the ground that 2500 hectares of land are being made over to the Concessionaire as a largesse was also rejected. The Court held that the project was in public interest. In this judgment the Court specifically rejected the plea that the project is not for public purpose. The judgment has attained finality.

64. Shri Sinha submits that salient provisions of the concession agreement provide for the entire cost of construction to be borne by the company by means

of finance to be organized by it. After the concession period of 36 years, the expressway has to revert to YEIDA at nil value. The land for expressway is to be granted on lease to the concessionaire. The land for development is to be given on lease for a period of 90 years. The provision of land for development is linked to the progress of expressway. The payment of annual lease rent and premium for land for expressway and land for development is to be met by the company on annual lease rent prescribed at Rs. 100/- per hectare. The premium is equivalent to the actual compensation cost of the land acquired. At the end of the concession period the expressway and all other assets are to revert back to YEIDA. He submits that in *H.T. Somashekar Reddy v. Government of Karnataka* and Anr. 2000 (1) Kar LJ 224, a learned Single Judge of the High Court had while upholding the acquisition of the land for expressway struck down the acquisition of the land for development. In writ appeal the judgment was reversed. The Division Bench judgment was later affirmed by the Supreme Court in *State of Karnataka and Another Vs. All India Manufacturers Organization and Others*, The Supreme Court unequivocally held that the project was not merely a highway project but an integrated infrastructure development project for public purpose. As long as the project was referable to the agreement, it could not be said to be for any purpose other than the public purpose. An integrated project cannot be split into different components to consider as to whether each and every component will serve public purpose. A holistic approach has to be adopted. He submits that in *Sooraram Pratap Reddy (supra)* and *Villianur Iyarkkai Padukappu Maiyam v. Union of India* and Ors. JT 2009 (8) SC 339, the similar challenge was turned down. The Supreme Court held that where additional land was not made available only for real estate exploitation and therefore totally unconnected with the main objective.

65. Shri Sinha submits that in the advertisement, bid documents, concession agreement, and the affidavits of the State Government it is clearly shown that what was envisaged was not just the construction of the expressway but also development of land parcels. The project was a dual purpose project envisaging construction of express way as well as development of five land parcels along the same. The definition of the project includes the land availability schedule linked to the progress on the expressway. Even otherwise he submits that if there was an expressway and State Government had taken independent decision to develop five land parcels along the same for development, it could not be said that the acquisition was not for public purpose.

66. In reply to the submission that the acquisition is for the company Shri Sinha submits that the question has been clearly answered in *Balbir Singh's* case and many cases. The tests that the land is not acquired by the acquiring body but for the company are not satisfied. He submits that the payment of lease premium does not change the nature of acquisition. The premium is being paid by the company to YEIDA which in turn distributed the acquisition amount. The manner it utilizes the fund is for the YEIDA to choose and decide. Once the premium is paid over to the YEIDA, upon execution of the lease deed, it becomes

sole authority and owner of the land and is free to use it as it pleases. The moment the premium amount comes to YEIDA and stands credited to its account, it partakes the character of public revenue and that from this account the estimated compensation is to be paid. The decision in Balbir Singh (supra) has followed the reasoning in Pratibha Nema's case (supra). He would submit that the reasoning in Pratibha Nema's case is the same as it is taken by another bench of the Apex Court in Naihati Municipality (supra) in 1996. Shri Sinha replying to the submissions that the ratio in Balbir Singh's case is per incuriam submits that in Balbir Singh the same provisions of concession agreement were subject matters of consideration. The Clauses in respect of payment of lease premium, equivalent to acquisition cost are identical in reply of both land for expressway, as well as the land for development. The payment of premium to YEIDA and it becomes its own fund is based upon the binding verdict in Pratibha Nema's case. He relies upon Sundarjas Kanyalal Bhatija v. Collector Thane 1990 (180) ITR 130:

One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority.

67. Shri Sinha submits that rule of per incuriam applies where a judgment is rendered in ignorance of some binding provision of law, a binding precedent of the same Court, or a superior Court. In Rana Pratap Singh v. State of U.P. 1995 ACJ 200 a Full Bench of this Court held:

The Full Bench in Pritam Kaur's case (supra), on its part, held, "It is equally necessary to highlight that the binding nature of precedents generally and of Full Benches in particular, is the king-pin of our judicial system. It is the bond that binds together what otherwise might well become a thicket of individualistic opinions resulting in a virtual judicial anarchy. This is a self imposed discipline which rightly is the envy of other schools of law. "The Bench further added "The very use of the word "binding" would indicate that it would hold the field despite the fact that the Bench obliged to follow the same may not itself be in agreement at all with the view. It is a necessary discipline of the law that the judgments of the superior Courts and of larger Benches have to be followed unhesitatingly whatever doubts one may individually entertain about their correctness. The rationale for this is plain because to seek a universal intellectual unanimity is an ideal too Utopian to achieve. Consequently, the logic and the rationale upon which the ratio of a larger Bench is rested, are not matters open for reconsideration. Negatively put, therefore, the challenge to the rationale and reasoning of a larger Bench is not a valid ground for unsettling it and seeking a re-opening and re-examination of the same thus putting the question in a flux afresh.

68. Shri Sinha submits that the acquisition cannot be faulted on the ground that it is not for public purpose as the land has been acquired for development,

residential, commercial, industrial, institutional and recreation purposes. The Concessionaire is required to obtain all clearances under the applicable laws. It is not necessary for acquiring body to have any specific scheme in mind at the stage of acquisition specially when the acquired land is a part of a large acquired area. If the land is part of an integrated project, the purposes specified in the project and connected therewith becomes the purposes in which the land is acquired. For instance where the acquisition is made for planned development, the planned development itself may include all the purposes mentioned in the concessions agreement. He relies upon judgments in *Aflatoon* (supra) and *Bhagat Singh* (supra) for the proposition.

69. So far as invoking Section 17(1) and dispensation of enquiry u/s 5A is concerned, Shri Sinha submits that the project cost has already increased from Rs. 1750 crores at its inception, to about Rs. 9700 crores. The agreement establishes that the release of land for development was inextricably linked to the physical progress of work on the expressway. The cost of construction of the expressway is to be defrayed from the land for development. There was thus an added and underlined requirement for the land for development. The project has to be completed before the commencement of the Commonwealth Games 2010, and thus in the light of these facts the State Government was fully justified for invoking the provisions of Section 17(1) of the Act. This Court has also upheld the invocation of provisions of Section 17(1) in *Nand Kishore Gupta* (supra). The State Government had requisite material before it to enable it to form an opinion whether the enquiry should be dispensed with. The sufficiency or insufficiency of such material is not the scope of enquiry in these matters.

70. Shri Sinha submits that in *Om Prakash* (supra) the reason of possibility of encroachment was not taken to be relevant consideration. In *Om Prakash* the acquisition covered an area of approximately 494 acres. In this case the acquisition covers 2500 hectares, or 25 million square meters. In such a large area there is always possibility of encroachments and third party interference even before the State can take possession u/s 9 of the Act. He further submits that the observations in *Om Prakash*'s case (supra) have been explained by the Supreme Court in *Munshi Singh v. State of U.P. and Ors.* (supra). The Supreme Court found that earlier the exercise of acquisition of land was allowed to lapse and after a long gap fresh proceedings were taken. The Government did not disclose any material to form the opinion of invoking urgency clause. In *Krishan Lal Arneja* (supra) the property in question was requisitioned way back in 1950 and was continuously in the occupation of Government officials. The acquisition was initiated in 1987 when the Requisition Act was about to lapse. In *Babu Ram* (supra) once again the Court noticed that the acquisition exercise was sought to be undertaken in the years 1995 and 1996 and no further steps for acquisition which was revived only in 2005. The acquisition was for setting U.P. sewage treatment plant which could possibly be shifted covering only a few plots and that in the latest judgment in *Tika Ram and Others Vs. State of U.P. and Others* etc. etc., the Supreme Court clearly found that the urgency u/s 17(1) and (4) of

the Act need not be equated with the urgency contemplated u/s 17(2) of the Act. The planned development is a matter of great urgency and in the absence of malafides on the availability of sufficient material before the State Government, the judicial review must end there.

71. Shri Sinha submits that the choice of the land by the concessionaire is not a ground taken in the pleadings and has been projected only in the argument in support of the submission that the acquisition was a colourable exercise of powers. He would submit that in the advertisement and bid documents itself the choice of the land from amongst the notified land of acquiring body was a condition set out in the advertisement and bid documents itself. The land parcels were identified and selected with the concurrence of YEIDA which was duly informed of the same. The industrial development area of YEIDA was notified in April-August 2001 itself. The selected bidder was required to choose the land parcels at five different locations from this area. It cannot be said that the selection of sites has changed the nature of acquisition. The land was to be made available subject to the availability and is to be utilised in accordance with the Master Plan and relevant regulations.

72. Shri Navin Sinha further submits that in the 14th Board Meeting of the Taj Expressway Industrial Development Authority, (now YEIDA) dated 9.3.2007, the question of alignment of the expressway was discussed. The request of the Jaiprakash Associate Ltd. for alignment of the road, taking its total length on 165.537 kms was discussed and approved. While discussing item No. 5 the Board considered the letter of the concessionaire dated 8.12.2006, according to which the alignment of the road was to begin from Greater Noida and to end at National Highway-2 totalling 165.537 kms. The request for minor changes incorporating the alignment was proposed by the concessionaire due to engineering design consideration and also to address environmental and local concerns.

73. Shri Navin Sinha submits that so far as the expressway is concerned, the alignment of the road by extending it beyond Chhalesar and the river "Yamuna" upto Fatehabad road, was both for the purposes of environmental concern as well as providing a bye-pass to the city. He would submit that in the public hearing held by the U.P. Pollution Control Board on 27.1.2010, in respect of expressway, in-principal approval was given for road for its alignment upto National Highway-2. The Regional Officer, U.P. Pollution Control Board by its letter dated 20.2.2007 provided approval of the alignment of the Taj Expressway. He would further submit that the Additional Director, Government of India (Pariyavaran Bhawan) New Delhi by its letter dated 11.4.2007 considered the construction of 6/8 Lane Accessed Control Expressway, and that the Ministry of Environment and Forests granted environmental clearance to the project under the Environment Impact Assessment Notification 2006, subject to certain conditions, which will be strictly complied with by the concessionaire. He would submit that since the entire project is an integrated project, the clearance is

referable not only to expressway but to the entire project including the land for development.

74. In paragraphs 14 to 17 of the Writ Petition No. 29682 of 2009 Narendra Road Lines Pvt. Ltd. v. State of U.P. and Ors., it is stated by the petitioners that the land adjoining the Expressway at Mauza Kuberpur, where the Expressway is joining NH-2 was the ideal place for any project. The land has been left out at that place to give benefit to certain influential persons of the locality having clout with the Government. The map shows that the land, which has been acquired for Yamuna Expressway, is meeting NH-2, whereas the land in dispute of the petitioners is at 1 1/2 km away from Yamuna Expressway. The land has been acquired only on the sweet will of Jay Pee Group at their dictates. The Jay Pee Group is monopolizing the scheme and the Government is obliging Jay Pee Group as it is the dream child of the Chief Minister. The land is being used by the petitioners as transport, workshop, garage and yards for providing parking to the vehicles. It is bounded by high boundary walls. The petitioners have obtained a declaration u/s 143 of the Zamindari Abolition and Land Reforms Act from the Sub Divisional Magistrate concerned by the order dated 2.9.2008.

75. In the counter affidavit filed by the State, YEIDA and Jaypee Infratech Ltd., the allegations in paragraphs 14 to 17 of the writ petition are denied. It is stated that the construction of the expressway was preceded by a detailed technical study relating to its alignment etc. and the course of expressway has been finalised on the basis of technical study, and not to benefit any influential person. The project was conceived in the year 2001 when Shri Raj Nath Singh of Bhartiya Janta Party was the Chief Minister. It was finalized in the year 2003 after competitive bidding in which respondent No. 5 was selected.

76. In the counter affidavit of Shri Indra Nandan Singh, Naib Tehsildar, YEIDA, it is stated that the petitioner has annexed the map of three different villages contiguous with each other. The road was planned after surveys in which the engineers and officers of different levels considered the map. The technical committee also supervised the map and the land and found that the subject land is necessary for acquisition. The land at Kuberpur is also acquired for expressway and inter-change. The land of village Chhalesar has been acquired for development and along with land in villages Kuberpur and Chaugan. The Sub Divisional Magistrate did not have power to convert the land notified for YEIDA, for abadi purposes u/s 143 of the U.P. ZA & LR Act after the notification in the year 2001. The YEIDA has not given permission to the petitioners to raise the constructions in the notified area of the authority. The abadi land can also be acquired, as the definition of law includes u/s 3(a) of the Land Acquisition Act, 1984, the benefits to arise out of the land, and things attached to the earth or permanently fastened to anything attached to the earth.

77. In the supplementary affidavit filed on behalf of the petitioners, a map is annexed to demonstrate that plot No. 1163M is at a distance of 1 1/2 kms on the expressway. It is not a certified copy of the village map. It does not bear the

endorsement of any authority, to be relied upon in proof of the averments that the plot in dispute is 1 1/2 kms away from the expressway. The notifications under Sub-section (1) of Section 4 and Sub-section (1) of Section 6 of the Act dated 31.3.2009 and 2.6.2009, include plots 1155 (area 0.6110 hectares); 1156 (area 1.0180 hectares); 1159M (area 0.1100 hectares); 1161M (0.1200 hectares); 1164 (area 0.6090 hectares); 1165 (area 0.6040 hectares); 1167 (area 1.0700 hectares); 1168 (area 0.6590 hectares); and 1169 (1.0700 hectares). All these plots are contiguous to the plot No. 1163M and are included as part of the notifications acquiring 174.5708 hectares in village Chhalesar, Tehsil Atmadpur, Pargana Atmadpur, District Agra. The petitioners have not been able to prove that the plot No. 1163M is at a distance of 1 1/2 kms away from the expressway. The photographs annexed to the writ petition would show that apart from boundary walls, there is no construction on the land in dispute. The land in the villages Chhalesar, Kuberpur and Chaugan, along with 14 other villages in Tehsil Etmadpur, District Agra, were notified u/s 2(d) and Section 3 of the U.P. Industrial Area Development Act, 1976. The Sub Divisional Magistrate did not have authority u/s 143 of the U.P. ZA & LR Act 1951, after the notification under the U.P. Industrial Area Development Act 1976, to notify the plots as abadi. In any case the order declaring the plot as abadi will not have any effect on the acquisition by notifications under Sections 4 and 6 read with Section 17(1) and (4) of the Act.

78. The arguments advanced by Shri B.D. Mandhyan, Shri Salil Kumar Rai, Shri Uma Nath Pandey and Smt. Sarita Shukla challenging the acquisition of land for development on the ground that the project is a profit earning project of private nature and thus the purpose of acquisition is not public purpose, for which valuable agricultural holdings are sought to be acquired, and on the validity of the agreement with reference to various Clauses in the Concessionaire agreement dated 7.2.2003, and in respect of which it is stated that the agreement is a complete sell out by the State in favour of the private company, were considered and turned down in Ashutosh Srivastava (*supra*) and Balbir Singh's case (*supra*).

79. In Ashutosh Srivastava (*supra*) this Court, after rejecting the preliminary objection that the petitioner has raised important questions with respect to the project, which are in the public interest and holding that he had locus to challenge, did not accept the contention that the award of contract was actuated by malafides. The court did not find any fault with tender process or the terms of contract, and held that the terms are not unconscionable or against public interest. The Court did not find any reason to conclude that the report of the Enquiry Commission presided over by a retired High Court Judge was bad or illegal. The concessionaire agreement dated 7.2.2003 was examined in detail and was found to be valid. The Court found that as far as the merits of the case are concerned, the Commission of Enquiry has gone into the question and held that the Government officers had applied their mind and thereafter came to the conclusion that all relevant factors were considered. The officers of the State

Government had also testified before the Commission. The Commission had in terms held that there was a good deal of deliberations and considerations were made, at the level of the State Government before granting approval. The recommendations of the Commission were scrutinized by the Finance and Law Department and they were found to be in order. The Court held:

32. ...The scope of scrutiny by the Court in such matters is very limited, as has been held by the Apex Court in a number of judgments, leading one being in the case of BALCO Employees Union (supra). In the matters of economic policy or award of contract, the Court can go into the decision making process (as laid down in the cases of Tata Cellular (supra) but only when there is something unconscionable as held in BALCO Employees Union (supra). It is not for the Court to substitute its own view or approach, for that of the Government. Independent of this, we have also prima facie looked into the submission of the petitioner. What he is trying to contend on the basis of the present value of the land is that there will be a good bonanza for the respondent No. 2-Company. As pointed out earlier, the cost of the land acquisition is to be borne by respondent No. 2, which is not included in the cost estimated by the petitioner. The Government does not have to contribute anything. The toll charges are not to be determined by the respondent No. 2-Company, but will be at the rates notified by the State Government and the collection of toll is going to be for 36 years. In the aforesaid circumstances, we do not think that the contract amounts to granting any favour to the respondent No. 2.

80. Once again, in Balbir Singh's case the Court dismissed the writ petitions challenging the notifications issued under Sections 4 and 6 of the Act in respect of land for construction of expressway on the grounds that the acquisition is for the purposes of the Company and thus the acquisition could be made only under Part VII of the Act. The Court held:

Admittedly neither the company has made any application for acquisition of the land as regard under Rule 4 of the Rules for his own purposes nor the land vests in the company and it is on certain terms for which the power is possessed by the authority under the Transfer of Property Act, the company has been given the land which has to come back to the authority at a particular point of time and thus submission that acquisition was for company for the purpose of company, at the cost of the company so as to attract the provisions of Part VII of the Act and as the procedure has not been followed, acquisition has to fall is to be gently ruled out.

At this place provisions as contained in Section 43 of the Act, also can be touched. This Section which is in Part VII of the Act clearly excludes applicability of Section 39 - 42, based on which non performance of various formalities, has been argued. If under the acquisition, Government is not bound to provide the land to the Company, then also provisions of Part VII may not apply. On the facts of the present case it is clear that the land was never needed by the company. No application was ever made by the Company for acquisition of land. It was

never acquired for the company and under the acquisition, Government was never bound to provide land to the Company.

When the project was conceived the company was even not in existence for the purpose and the project and its object as has been already noted in the opening part of this judgment on being achieved is to be certainly accepted to be an object meant for the public and in the best interest of all around development i.e. economic, industrial or otherwise.

In the present case, admittedly the acquisition is for construction of expressway which is otherwise for the benefit of the public at large. We can take note of the tremendous growth in the population and the roads and other facilities available to the public at large to be seriously lacking.

On these facts it is clear that the State Government in order to provide the infrastructural facilities for developing industries throughout the Yamuna Belt has taken U.P. the project which can be said to be of national importance as it is to connect various cities of Uttar Pradesh to the National Capital and the involvement of the respondent No. 3 is for a limited purpose. The respondent No. 3 is basically to execute the project within stipulated time and is to depart within the time so allowed and thus the acquisition in question is to be held purely for the public purpose and not for the benefit of the respondent No. 3. At the time when the project was in the mind of State authority there was no involvement/existence of the respondent No. 3 and thus the submission of the petitioners side about the acquisition being camouflage in the name of public purpose for the purpose of company being totally misconceived and based on no foundation has to be negated. Thus it is clearly held that acquisition is for the public purpose.

The aspect which can be said to be the main issue on which stress was given by the learned Counsel for the petitioners is that no compensation came to be paid i.e. wholly or partly out of public revenue or some fund controlled or managed by a local authority. This has been argued to be the main distinctive feature in respect to the acquisition for the public purpose so to be covered u/s 4 and 6 of the Act and in so far the acquisition for a company even for a public purpose as contemplated under Part VII of the Act.

81. We find substance in the objections of Shri Navin Sinha that it is not open to the petitioners in these writ petitions to challenge the acquisition for land for development, under the project on the grounds that there is no public purpose to be served in acquiring the land and that the acquisition suffers both from malafides as the land is being acquired for the benefit of the private company and that the land for company can be acquired only under Part VII of the Act. The challenge to the acquisitions of the land on these grounds, is barred on the principles of res judicata. The public policy requires that there should be an end to the same litigation. The purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be made open to parties to reagitate the matter again and again. The doctrine of res judicata is based on the

larger public interest. Section 11 of the Code of Civil Procedure, 1908 gives statutory recognition to the principles of res judicata. Explanation VI to Section 11 of CPC 1908, provides that where persons litigate bonafide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall be deemed to claim under the persons so litigating. In *Forward Construction Co. v. Prabhat Mandal* (1986) 1 SCC 100, the Supreme Court held that in view of Explanation VI, it cannot be disputed that Section 11 CPC applies to public interest litigation, as long as it is shown that the previous litigation was in public interest and not by way of private grievance. Further the previous litigation has to be a bonafide litigation in respect of a right, which is common and is agitated in common with others. In *Ashutosh Srivastava* (supra) this Court had rejected the objections taken by the Advocate General of the State that the questions raised were not in public interest and that the litigation was not bonafide. In para 5 of the judgment this Court held:

5. Before entering into the merits of the case, we shall first proceed to deal with the preliminary objection raised by Sri Jyotindra Misra, learned Advocate General with regard to the locus of the petitioner to file this petition. It has been contended by Sri Misra that the petitioner cannot be said to be a person interested in the awarding of contract to any party and, as such, a writ petition at his behest would not be maintainable. The petitioner is a citizen residing at NOIDA. In our view, he has raised certain important questions with respect to this project, which are in public interest and as such his locus to challenge the same cannot be denied. This petition cannot, thus, be rejected on any such ground.

82. In *State of Karnataka and Anr. v. All India Manufacturers Organisation and Ors.* (supra) the Supreme Court, in a similar situation in which a Division Bench of Karnataka High Court in *H.T. Somashekar Reddy v. Government of Karnataka* (1999) 1 KLD 224 (DB) had dismissed the writ petition challenging the framework agreement for construction of Bangalore-Mysore Infrastructure Corridor Project, did not again go into the questions raised on the ground of the bar on the principles of res judicata. It was held in para 35 that as long as litigation is bonafide, a judgment in a previous public interest litigation would be a judgment in rem, which binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue, or an issue, which had been raised, should have been raised on an earlier occasion by way of a public interest litigation.

83. In *Ashutosh Srivastava* (supra) by way of public interest litigation and in *Balbir Singh* (supra) the land owners had challenged both the bonafides of the State Government in entering into a contract with the private company for construction of expressway and development of land, as well as the contents of the agreement to show that the agreements are heavily loaded in favour of a private company, negating the public purpose and the procession of the purpose for which the land was sought to be acquired. The litigation in both the previous

cases was not found to be malafide, or for achieving a purpose other than bonafide challenge to the project and the acquisitions of the land. The project has been scrutinized by this Court and has been upheld by this Court in three previous rounds of litigations. It is not open to the petitioners therefore to again challenge the same project on the grounds of vagueness, malafides and on the ground that the acquisition is for a company.

84. In the new economic era beginning with 1991, a large number of projects have been undertaken by the State Governments in partnership with private entrepreneurs for infrastructure development. The Central Government and the progressive State Government have changed their policies from a conservative socialism to a progressive and dynamic socialism giving opportunities to all individuals, with limited State control, for development of infrastructure, commerce and industry. The successive Governments are making efforts to develop the country, in competition with the rest of the world, and in order to provide impetus to industry, commerce and tourism, the establishment of fast moving corridors in selected areas, require the construction of expressways and development of land for providing opportunities of development. In *State of Karnataka v. All India Manufacturers Organisation* the Supreme Court, examining a similar project comprising of 13,237 acres of private land and 6956 acres of government land for construction of expressway and development of area between Bangalore-Mysore, found that as the mega project involves considerable extent of land, the State had agreed to provide minimum extent of land required for the project partly out of the land owned by the State and by acquiring the balance. The company required not only to construct the proposed expressway but also link roads, peripheral road, interchanges, service roads, toll plazas and maintenance area, etc. in addition to the townships. The project by its very nature requires considerable extent of land, and that is why the State has agreed to provide the land to the extent available with it and to acquire the balance. There were mutual obligations on both the parties under the agreement for which the State was only facilitating the acquisition of land. The issue of excess land and other connected issues were also considered and it was found that bare minimum of land for the project was calculated by a scientific method. The scientific technique was involved in identifying the land and road alignment, etc.

85. In the present case the terms and conditions of the concessionaire agreement dated 7.2.2003 were examined by this Court in both *Ashutosh Srivastava* (supra) and *Balbir Singh's* case (supra) and nothing objectionable was found.

86. We have again examined and find that the construction of expressway of 165.537 kms with 100 meters width, and provision of 2500 hectares of land on a band of about 500 meters including 100 meters for expressway at five or more locations, is integral part of the agreement. Since the chosen concessionaire was not projected to recoup the expenditure required for construction of the expressway from toll collection from 36 years, the agreement provided to make

the project financially viable, by providing development of land parcels in the project, concept and design. The basic concept, design of the project included the constructions of the expressway and the development of the land parcels. This basic concept was included in the advertisements issued both in the years 2001 and 2002 before selecting the concessionaire and also in the bid documents which required the interested parties to be experienced in both infrastructure construction, and real estate development.

87. The project was designed in the manner that the construction of expressway and development of land, was inextricably interlinked and was dependent upon each other, for its financial viability. The land for expressway is to be granted on lease. As the cost of construction of the expressway was not projected to be recovered within 36 years, the land for development was to be provided on the cost of acquisition and on lease rent Rs. 100/- per hectare for a period of 90 years with linkage to the progress of construction of expressway. The premium is equivalent to the actual compensation cost of the land acquired. The agreement provides that at the end of the concession period the expressway and all other assets are to revert back to YEIDA.

88. The Clauses of termination of the concession agreement have been provided after long deliberations and considerations with the officers of the different departments of the State Government. We do not find anything objectionable, in the Clauses of the concessionaire agreement providing for retention of the amount for development by the concessionaire, even if the contract is terminated. Having paid the premium amount, and with conditions to transfer of lease hold/sub leasing, multiple sub lease of rent, it was found appropriate by the State Government to allow the Concessionaire to continue to utilize the land on lease for a period of 90 years. There is nothing unusual in the Clauses which protect the rights of the parties to the agreement in the event of termination of the contract, nor can such Clauses be the ground of challenge to the acquisition of the land. The possibilities of the breach of the agreement, for reasons which cannot be foreseen at this stage, and the effect of such termination on the rights of the parties to agreement, are not required to be considered by the Court at this stage. These rights, if such an occasion arises, may be subject to consideration by the Arbitrator or by the Court, in appropriate proceedings, at an appropriate stage. A possibility of the advantage to be taken by the concessionaire is not a ground on which the Court may declare the concession agreement to be violative of public policy, to attract Section 23 of the Indian Contract Act, and to declare it inoperative. The entire argument built U.P. by Shri Salil Kumar Rai on the Clauses of termination of the contract, is for the purposes of satisfying the Court that the purpose of acquisition of the land for development is not bonafide. We have already observed that these questions cannot be raised again and again on the principles of res judicata and that in any case a hypothesis based on the possible breach of the conditions of the agreement cannot be a ground to challenge to the acquisition of land for public purpose.

89. It is submitted that in Balbir Singh's case the Court has misread the judgment in Pratibha Nema's case and ignored the material observations of the Apex Court. In Pratibha Nema's case the acquisition of 73.3 hectares of dry land situated in Rangwasa Village of Indore District was under challenge. The land together with the extent of 44.8 hectares of government land was meant to be placed at the disposal of the Industries Department for allotment to various industrial units - the foremost among them, the company set U.P. for diamond-cutting and polishing units. After the land was located, on a proposal put U.P. by the District Industries Centre, the Joint Inspection Committee of officials of the Government gave sanction in principle for acquisition. The District Collector, Indore sought approval of the Commissioner u/s 17(1) of the Act to expedite the process allotting the prestigious exporters from India as well as foreign countries to establish their units to generate foreign exchange and employment potential. The Commissioner accorded approval on which notifications were issued. An interim award was made representing 80% of the estimated compensation. The writ petitions and letter patent appeals against the judgment were dismissed. In Special Leave Petitions on the basis of representation made by the State of Madhya Pradesh the notifications u/s 6 were allowed to be withdrawn to follow the procedure u/s 5A and accordingly the notification u/s 6 was withdrawn. A report was thereafter submitted overruling the objections u/s 5A of the Act. A fresh notification u/s 6 was issued with a public purpose as "establishment of a diamond park". The acquisitions were again challenged and dismissed by the High Court. The Supreme Court repelled the challenge to the vagueness of the public parties in acquiring the land; the challenge to the validity on the ground of environmental considerations and the grounds that the acquisition was not for the public purpose but for the acquisition for the companies. The Supreme Court relied upon Smt. Somavanti and Others Vs. The State of Punjab and Others, Jage Ram and Others Vs. State of Haryana and Others, Manubhai Jehtalal Patel and Another Vs. State of Gujarat and Others, ; Indrajit C. Parekh of Ahmedabad and Another Vs. State of Gujarat and Others, and held in para 19 that a public purpose is involved in the acquisition of land for setting U.P. an industry in the private sector as it would ultimately benefit the people. Every industry need not necessarily promote public purpose and there could be exceptions which negate the public purpose. But, it must be borne in mind that the satisfaction of the Government as to the existence of public purpose cannot be lightly faulted and it must remain uppermost in the mind of the court. The Supreme Court thereafter referred to Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurmurthy Sastry and Others, R.L. Arora Vs. State of U.P., and held in paragraph 22 as follows:

22. Thus the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The main and perhaps the decisive distinction lies in the fact whether cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient

compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting U.P. of an industry in private sector could get imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present State of law, that seems to be the real position.

90. In the present case the project was conceived and envisaged by the State Government in the year 2001, when it invited bids and fresh bids in 2002, to implement the project on the, "build, operate and transfer," basis. It was not a project of, or conceived by any company. It was not preceded by any application of the company for acquisition of land for a project conceived by or for its own works as in the case of Pooran Singh (*supra*). The acquisition is primarily for the construction of an expressway and development of land parcels. The land for the project is being provided by the Government upon acquisition to the concessionaire on the cost of the land to be deposited by the concessionaire with YEIDA the acquiring body as premium, and on a 90 years" lease with a fixed lease rent. The premium was provided to be equivalent to the cost of the land, at a time on 7.2.2003, when no land had been acquired and the Government did not even have the estimate of the cost of the land. The cost of acquisition was estimated at a ready and rough means to calculate the premium. As soon as the estimated premium was received by the YEIDA, it becomes its fund and has taken the character of public revenue. The provisions of Part VII of the Act are therefore not attracted.

91. In present case the contribution is not of a trifling sum to examine its character to find out the real purpose of acquisition. The estimated cost of acquisition as the premium of the land has been deposited by Jaypee Infratech Ltd. with YEIDA, the acquiring body and has become part of the funds of the YEIDA. The acquisition of land as such both for expressway and land for development is held to be for public purpose.

92. A lot of emphasis was led by learned Counsel for the petitioners on the choice of four parcels of land other than the land which was identified in the project in NOIDA. It is submitted that the respondents have not produced the material to show as to whether the acquiring body, or the company had selected the remaining four sites of land for development at the locations in District Gautam Budh Nagar, Aligarh and Agra. The choice is alleged to arbitrary and made for selecting the best sites for making financial gains in which large areas of fertile land has been selected depriving the land owners of their livelihood. The petitioners suggested that the best of the parcels of the land along with the expressway has been chosen by the company.

93. It is admitted by the YEIDA that the land of four sites was chosen by the Jaiprakash Industries Ltd. on 12.7.2003 under concession agreement dated

7.2.2003, under the signatures of the Managing Director of Jaiprakash Industries Ltd. to the General Manager (Project) Taj Expressway Industrial Development Authority, District Gautam Budh Nagar. The choice, however, was not at the sole discretion of the company made arbitrarily from out of any land available within 500 meters band width of the expressway. The land was chosen in consultation with YEIDA from out of the villages, Tehsils and the Districts notified u/s 2(d) read with Section 3 of the U.P. Industrial Development Areas Act, 1976. By notifications dated 22.8.2001, the land of several villages in Tehsil Sadar and Jewar District Gautam Budh Nagar; Tehsil Khair in district Aligarh; Tehsil Sadar and Atmadpur in district Agra; Tehsil Sadar and Math in District Mathura were notified by the State Government. The selection of the four sites for acquisition from out of these areas was within the terms of the concession agreement dated 7.2.2003. The selection of sites for acquisition for land for development was, therefore, strictly in terms with the concession agreement dated 7.2.2003 and was made out of the notified areas.

94. It is relevant to mention here that the area of operation of YEIDA was extended by subsequent notifications dated 27.8.2007; 5.9.2007; 12.11.2007 and 8.2.2008 bringing more areas in the Districts of Gautam Budh Nagar, and District Bulandshahr into the industrial development area.

95. We do not find that the public purpose for acquisition of land in the notifications suffers from vagueness. The notifications specify that the land is sought to be acquired for development under the "Yamuna Expressway Project" through "Yamuna Expressway Industrial Development Authority". In *State of Tamil Nadu v. L. Krishnar*, (1996) 1 SCC 250 the Supreme Court held that the question, whether the notification suffers from vagueness, is a question of fact to be decided in each case, having regard to the facts and circumstances of that case. By saying that the public purpose in the notification is vague what the respondents really mean is not that it is not a public purpose, but that since the public purpose is expressed in vague terms and is not particularised with sufficient specificity, they are not in a position to make an effective representation against the proposed acquisition. The Supreme Court relying upon the Constitution Bench decision in *Aflatoon* (supra) in which large extent of land was acquired for public purpose for planned development of Delhi and in *Pt. Lila Ram v. Union of India* (1975) 2 SCC 747 held that where the notification pertains to a huge area covering thousands of acres, it is difficult to insist upon greater precision for specifying the public purpose. It is quite possible that various plots covered by the notification may have to be utilised for different purposes set out in the plan. In those cases Interim General Plan was prepared and published by the Government after approval by the Cabinet as a policy decision for development of Delhi as an interim measure till the master plan could be made ready.

96. In the present case, we find that the land for development for "Yamuna Expressway Project" through "Yamuna Expressway Industrial Development

Authority" is an integrated project. The land was initially acquired for the expressway and thereafter the land has been acquired for developing five parcels, as townships, as an integrated plan of development, both for compensating the concessionaire for the cost of the expressway, as well as the development of the area. The agreement provides that the parcels shall be developed strictly in accordance with the plan prepared by the YEIDA, by adhering to the bye-laws of YEIDA, and other laws applicable to development. The Jaippee Infratech Ltd. will be developing these five parcels strictly in accordance with the concessionaire agreement. The State Government was, therefore, not required to particularise, or to specify the public purpose by pointing out to the nature of the development on each plot of the land acquired for "Yamuna Expressway Project.

97. Learned counsels appearing for the petitioners have relied on the observations made by the Supreme Court in *Om Prakash and Another Vs. State of U.P. and Others*, that the possibility of encroachment over the area cannot, by any stretch of imagination, be considered the germane ground for invoking urgency powers for dispensing with Section 5A enquiry and that there is no guarantee that the acquired land will not be encroached upon by unruly persons within 15 days of issuance of notice u/s 9(1), and further that the raising of construction is a law and order problem which is nothing to do with the acquisition and urgency of taking possession. The argument does not take into account the subsequent decisions of the Supreme Court.

98. 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 5A of the Act could be completed. In other words, if power u/s 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time bound project where the delay is likely to render the purpose nugatory or infructuous. A

citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority, while applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency Clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration.

99. 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 malafides 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 U.P. 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 were 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.

100. In *Mahender Pal and Others Vs. State of Haryana and Others*, a case of acquisition for development and utilization of land for residential/commercial purpose where the appellants were using the land for residential purpose on which Samadhis of his ancestors and a Shiva temple was situated, in which the High Court had dismissed the writ petition in limine and in such facts relying upon *Mukesh Hans (supra)* and *Krishan Lal Arneja (supra)* the Apex Court held in paragraphs 13, 14 and 16 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).

16. It is a well-settled principle of law that an exception carved out from the main provision as a result whereof a citizen of India may be deprived of his property particularly having regard to the fact that if it is considered to be a human right, procedural safeguards laid down therefore must be scrupulously complied with. It being an expropriatory legislation deserves strict construction. See *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, *Devinder Singh and Ors. v. State of Punjab and Ors.* (2008) 1 SCC 728 ; and *City Montessori School Vs. State of Uttar Pradesh and Others*,

101. In *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.

102. 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 STP was set U.P. 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 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 u/s 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.

103. In *Smt. Manju Lata Agrawal v. State of U.P. and Ors.* 2007 (9) ADJ 447 (DB); *Sudhir Chandra Agrawal v. State of U.P.* 2008 (3) ADJ 289 (DB) and *Munshi Singh v. State of U.P.* 2009 (8) ADJ 360 (DB) this Court repelled the challenge to invoking Section 17(4) of the Act. In *Manju Lata Agrawal* (Supra) this Court summed U.P. 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."

104. In *Sudhir Chandra Agrawal (Supra)*, once again the legal position was summed U.P. 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.

105. In *Essco Fabs Pvt. Ltd. (supra)*, the Supreme Court after considering its earlier judgment in *Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, Jai Narain and Others Vs. Union of India and Others, Union of India and Ors. v. Mukesh Hans (supra); Chameli Singh (supra) and Nirodhi Prakash Gangoli and Anr. (supra)* held in paragraphs 44 and 47 as follows:

44. In our judgment, from the above case law, it is clear that normal rule for acquisition of land under the Act is issuance of notification under Sub-section (1) of Section 4, hearing of objections u/s 5A and issuance of final notification u/s 6 of the act. Award will be made by the Collector, notice has to be issued to the

land owners or the person interested and thereafter possession can be taken. Section 17, no doubt, deals with special situations and exceptional circumstances covering cases of "urgency" and "unforeseen emergency". In case of "urgency" falling under Sub-section (1) of Section 17 or of "unforeseen emergency" covered by Sub-section (2) of Section 17, special powers may be exercised by appropriate Government but as held by a three-Judge Bench decision before more than four decades in Nandeshwar Prasad and reiterated by a three Judge Bench decision in Mukesh Hans, even in such cases, inquiry and hearing of objections u/s 5A cannot ipso facto be dispensed with unless a notification under Sub-section (4) of Section 17 of the Act is issued. The legislative scheme is amply clear which merely enables the appropriate Government to issue such notification under Sub-section (4) of Section 17 of the Act dispensing with inquiry u/s 5A if the Government intends to exercise the said power. The use of the expression "may" in Sub-section (4) of Section 17 leaves no room of doubt that it is discretionary power of the Government to direct that the provisions of Section 5A would not apply to such cases covered by Sub-section (1) or (2) of Section 17 of the Act.

47. In the instant case, the facts are eloquent. Initial action of acquisition of land was taken as early as in 1982 but the proceedings lapsed. In 1991, when Essco made an application praying for change of user of land, it was rejected on the ground that the land was likely to be required for public purpose. Nothing, however, was done for about a decade. It is only in 2001 that again Notification u/s 4 was issued and urgency Clause was applied. We are, therefore, satisfied that the ratio laid down in Mukesh Hans squarely applies to the facts of the case. No urgency Clause could have been invoked by the respondents and inquiry and hearing of objections provided by Section 5A of the Act could not have been dispensed with. The actions of issuance of urgency Clause under Sub-section (4) of Section 17, dispensing with inquiry u/s 5A and issuance of final notification under Sub-section (1) of Section 6 are required to be quashed and they are accordingly quashed.

106. The case law cited above would show that in the matter of invoking emergency powers under the Act for acquisition of the land, each case has to be seen on its own facts, both for finding out the purpose of acquisition and whether the State Government had sufficient material available with it, to arrive at a conclusion to invoke such powers.

107. The State Government has produced before us the records in which at each stage beginning from the proposals, the State authorities have applied their mind on the material, before them and have recorded satisfaction that the land is urgently required for public purpose for fulfilling the "Yamuna Expressway Project". The possibility of encroachment in such large areas was found to be real and apparent threat putting the entire project into difficulty. The judicial review in such cases is limited to the availability of the material for applying Sub-section (4) of Section 17, for dispensing with the enquiry.

108. In these cases the materials produced before us would show that the project was considered by the State Government to be of great public importance. The construction of expressway was to be completed within a specified time, and is linked to the Commonwealth Games, 2010, beginning in October 2010. The large areas sought to be developed along the expressway are being encroached upon by various kinds of constructions. It was, therefore, felt necessary in public interest to complete the project within specified time under the concession agreement dated 7.2.2003, and to avoid encroachments over the land causing complications of taking over possession, the provisions of Sub-section (4) of Section 17 after declaring opinion of the applicability of Section (1) of Section 17, were applied to dispense with the hearing of objections u/s 5A of the Act. On the principles of law settled by the Supreme Court, in the cases cited as above, we are of the opinion that the State Government did not commit any illegality in arriving at a decision under Sub-section (4) of Section 17, to dispense with the requirements of hearing the objections u/s 5A of the Act.

109. There is sufficient material to demonstrate that the TEA (now YEIDA) had considered and approved the alignment of the length of the road upto 165.537 kms in its 14th Meeting dated 9.3.2007. The connection of the road, with its alignment, with the Fatehabad road has also received the approval of the U.P. Pollution Control Board, taking care of the environmental concerns, and providing a bye-pass to the residents of the city of Agra. The Ministry of Environment and Forest has also given environmental clearance to the project under the Environment Impact Assessment Notification 2006. We are assured that the concessionaire will strictly follow the specific conditions and general conditions provided in the clearance communicated to it by the Additional Director of the Ministry of Environment and Forest, in his letter dated 11.4.2007.

110. The Chief Standing Counsel has provided a composite chart along with his written submission giving the details of the five land parcels; the total number of tenure holders affected by the acquisition for land for development under the project; the number of writ petitions and the petitioners in the writ petitions; the area affected; the number of unaffected tenure holders and the area; the number of tenure holders, who had signed the agreement for compensation and those who have received compensation. He has pointed out that out of total number of tenure holders, and the area affected, only 32.91% of the tenure holders holding 40.20% of the total area, had not so far, accepted compensation. A composite chart provided by the Chief Standing Counsel is extracted as follows:

YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY COMPOSITE CHART OF LAND PARCELS IN DISTRICT G.B. NAGAR, ALIGARH AND AGAR

----- S					
Name of	Total number	Number of	Number	Affected	Unaffected
tenure writ	of area	in	tenureholder	holders	petitioners
in writ	petitions	(in hectare)	petitions	(in other than	hectare in writ
petitions					

Numbers	Area		(in	of	persons	hectare)	
							1 2 3
4	5	6	7	8			
II 1705 24 28 13.607 1677 468.103 District G.B. (1.64%) (2.82%) (98.36%) (97.16%)							1 Site Nagar
III 1949 03 10 10.4593 1939 382.010 District G.B. (0.51%) (2.66%) (99.48%) (97.33%)							2 Site Nagar
IV 1950 28 424 209.009 1514 294.3012 District (21.74%) (40.97%) (77.64%) (57.69%)							3 Site Aligarh
V 1872 20 190 299.6468 1682 191.5247 District (10.15%) (61%) (89.85%) (39%)							4 Site Agra
GRAND TOTAL 7476 75 652 532.7226 6812 1335.938 (8.72%) (28.40%) (91.12%)							(71.23%)

Number of tenure holders and area, Number of tenure Balance tenure holders and who signed agreement/karar holders and area who area for taking compensation have received compensation

Numbers of person	Area (in	hec)	Numbers of	Area (in	Numbers of	Area (in	
persons	hec)		persons	hec)	persons	hec)	9 10
11	12	13	14	15	16	17	
(86.45%) 400.9849 1474 400.9849 203 (12.11%) 67.12 (83.22%) (86.45%) (83.22%)							1474 (14.33%)
(83.88) 311.48 1635 311.48 304 (15.68%) 70.53 (79.36%) (83.88%) (79.36%)							1635 (18.46%)
(52.51%) 164.3567 758 (50.07%) 150.052 719 (47.49%) 129.944 (55.84%) (50.98%)							795 (44.15%)
(?) 244.8621 (?) 856 244.8621 1016 246.3094							856
63.67%) 1121.6837 4723 1107.397 2242 758.133 (59.80%) (32.91%) (40.20%)							4760 ?

Note: Site I: Land falls in NOIDA and no dispute is pending in respect thereof

before Hon"ble High Court. Compensation has been disbursed.

111. The majority of tenure holders have signed the settlements and have accepted the compensation. We are, therefore, of the opinion that apart from the reasons given by us in the judgment for not accepting the grounds of challenge to the proceedings for acquisition of land, the acceptance of the compensation by the majority of the tenure holders, is also a ground on which we are not inclined to interfere in these writ petitions.

112. No other point was pressed.

113. All the writ petitions are consequently dismissed.