
(2011) 05 AHC CK 0312

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 50090 of 2009

Pankaj Kumar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Land Acquisition Act, 1894 — Section 11, 17(1), 17(2), 17(4), 4(1)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (2011) 05 AHC CK 0312

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. We have heard Shri Mirza Fahim Beg, learned Counsel for the Petitioners. Learned Standing Counsel appears for the State Respondents. Shri B.D. Mandhyan assisted by Shri Satish Mandhyan has entered appearance on behalf of Krishi Utpadan mandi Samiti, Tundla through its Secretary.

2. The Petitioners had earlier filed a Writ Petition No. 25226 of 2009 (Pankaj Kumar and Ors. v. State of U.P. and Ors.) for quashing the notification dated 29.7.2008 u/s 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 (in short, the Act) published in daily newspapers "Dainik Jagaran" dated 20.9.2008. The writ petition was dismissed as premature on 14.5.2009, on the ground that by that time notification u/s 6 of the Act was not published.

3. In this writ petition the Petitioners, as bhumidhars of plot No. 47 area 0.1150 hectare, and plot No. 50/1 area 4.0800 hectares of land in Village Basai, Pargana Tundla Tehsil Tundla, District Firozabad, are challenging the notifications u/s 4(1) dated 29.7.2008 with the opinion of the State Government, that the provisions of Sub-section (1) of Section 17 of the Act are applicable, also applying Sub-section (4) of Section 17 dispensing with enquiry u/s 5A of the Act, for acquiring plot Nos. 47, 50/1, and 51 total area 7.6090 hectares for construction of new market

yard of Krishi Utpadan Mandi Samiti, Tundla in District Firozabad. The Petitioners have also challenged the notification of declaration u/s 6 of the Act dated 3.8.2009 with the satisfaction of the Governor of U.P. that the case is one of the urgency applying Sub-section (1) of Section 17 directing that the Collector of Firozabad, though no award has been made u/s 11 of the Act, may, on the expiration of 15 days from the date of publication of notice under Sub-section (1) of Section 9, take possession of the land mentioned in the Schedule for said public purpose.

4. The notifications acquiring the land have been challenged on the ground that there was no urgency in the matter of acquisition. The proposal for acquisition at the stage of Collector was initiated way back on 29.11.2007. The Collector had written on 29.11.2007 to the Director of Land Acquisition for issuing notification u/s 4/17 of the Act acquiring the same area of the land in Village Basai for construction of new market yard by Krishi Utpadan Mandi Samiti, Tundla, District Firozabad. The State Government took eight months' time between the date of proposal for acquisition in issuing the notification, whereas the period of filing objections u/s 5A is only 30 days. After taking such a long time, which shows that there was no urgency for acquisition of the land for the purpose of constructions of new market yard, the applicability of Section 17(1), dispensing with enquiry and opportunity to file objections u/s 5A, is totally arbitrary and illegal exercise of power.

5. Learned Counsel for the Petitioner submits that plot No. 47 is the abadi land and is the only source of livelihood of the Petitioners. The plot Nos. 7 to 10, 12 to 19, 33, 34, 37, 39, 40, 41, 44, 45, and 46 have been converted into abadi and various residential colonies have come up in adjoining area for last more than 4-5 years. These colonies are getting thickly populated day by day. The new building for tehsil compound at Tundla was constructed in the year 2006-07, at a distance of 8 Kms away from the land in dispute towards Etah. The State Government did not have any material to invoke the powers of urgency and to dispense with enquiry u/s 5A of the Act.

6. In the counter affidavit of Shri Devendra Kumar Pandey, Secretary, Krishi Utpadan Mandi Samiti, Tundla, District Firozabad, it is stated in paragraphs 3, 4, 5, 6, 7, 8, 9 and 10, as follows:

3. That before giving parawise reply, it is stated that it has been held in several decision of this Hon''ble Court as well as of Hon''ble Apex Court that construction of the principal market yard is national urgency, therefore for the construction of market yard, it has been found necessary to apply provisions of Section 17(2)(4) of the Act.

4. That this Hon''ble Court may take judicial notice of the fact that all the existing market yard have become inadequate to carry on wholesale trade in specified agricultural produce as arrival of the agricultural produce have multiplied manifold and now in the age of scientific application, arrival of agricultural

produce are huge and existing market are incapable of handling over the same, therefore, it is crying need that new market yard be constructed at every places wherever Mandi Samiti have been established.

5. That in the existing markets there are no sufficient shops, go downs, parking places and mostly near the existing market residential colonies has developed, therefore, there is congestion in the existing market yards. Old markets had become incapable particularly during rainy season, it is not possible to approach wholesale market, there are no places for parking trucks, trolleys, tractor as mostly arrivals are now not by bullock-card but by vehicle but the roads are so narrow, it is not possible to have smooth passage for vehicle carrying specified agricultural produce to Naveen Mandi Sthal.

6. That it is stated that every where market yard may be constructed on scientific lying having sufficient open land and also places for construction of shops, platforms, go downs, and parking places, therefore, everywhere huge land is acquired keeping in mind at least next hundred years, so that there may be no shortage of space to carry on whole sale trade. Therefore, it has been upheld up to Hon"ble Apex Court that land may be acquired by applying urgency clause so that it may be acquired and possession may be taken and Mandi Samiti have got sufficient funds to raise construction on the market yard.

7. That if the provisions of Section 5(A) is applies, it consumes lot of time and it is said to be believed that for objection 21 or 30 days are needed and once the process begins then it become impossible to acquire land as several political pressures are applied by the tenure holders and in the age of democracy the acquisition become almost impossible if the process of considering objections, providing hearing, passing order and get the land in forcible future.

8. That construction of market yard is under the planned development scheme and an Indian wants development, therefore, just to avoid delay to carry out development plan, it has become now almost national urgency and central government has taken positive decisions that acquisition may be completed with speed so that principal market yard may be completed to facilitate the arrivals of agricultural produce for the benefit of purchaser and seller and for the purchasing public. The World Bank also provides loan for the purpose of construction of principal market yard. If Section 17 of the Act is not applied, the development activities would be hampered and desired result would not be achieved in forcible future, therefore, acquisition for construction of principal market yard has always been upheld and in all the cases urgency clause has been applied. The urgency is apparent as existing market has become absolutely incapable of handling mechanized agricultural produce and due to the delay agriculturist are hard sufferer as besides the market yard being incapable of handling, existing market is also scattered all over cities or towns, therefore, agriculturist are at disadvantageous position and at the hands of traders and they are subject to illegal exaction such as Dharma Daa, Karma Daa and several others illegal levies which are not supported by any provision of law, the

agriculturist being poor and illiterate, therefore, they are at the disadvantageous at their hands. Hence looking to plight of the agriculturist it is in the public interest and in the interest of country that provisions of Section 17 of the Act meets to be applied.

9. That no malafides can be attributed to the acquisition of the land as suitable land is selected by the Committee of responsible officer as has been mentioned in foregoing paragraphs and they have no personal interest to acquire the land of any individual person, therefore, the land is selected objectively and that too when there is no land of Gram Sabha or government available and after amendment in Land Acquisition Act, adequate compensation is being provided, now the tenure holders of the land gets enough money from which he can start any vocation for his livelihood and can purchase the land. Therefore, on every acquisition, writ petitions are filed challenging the notifications though ultimately almost all the writ petitions are dismissed. Therefore, above writ petition is concluded by several decisions, which will be placed before this Hon"ble Court, hence above writ petition is liable to be dismissed.

10. That the District Magistrate was fully satisfied about application of provisions of Section 17 of the Act and report was submitted to the Government that provision of Section 17 of the Act may be applied and on receiving papers and report of District Magistrate, the government applied its mind and was satisfied about urgency of acquisition of the land in dispute for construction of principal market yard Tundla, therefore, notification u/s 4 and 6 has been issued read with Section 17(2)(4) of the Land Acquisition Act.

7. In the counter affidavit of Shri Awadhesh Kumar Srivastava, Tehsildar, Firozabad filed on behalf of Respondent Nos. 2 and 3, it is submitted that the land was required for the purposes of construction of new market yard of Krishi Utpadan Mandi Samiti, Tundla in District Firozabad, which is a public purpose and due to the urgency Section 17(1) and 17(4) has been invoked. It has been held in many decisions of this Hon"ble Court that construction of market yard is a public purpose and the notice u/s 9 was issued on 11.9.2009 and 29.9.2009 was fixed for hearing of the objections. The notice was served on all the Petitioners on 16.9.2009 prior to the interim order dated 18.9.2009.

8. It is submitted on behalf of the State that prior to the declaration u/s 143 as abadi land, the acquisition proceedings had commenced. The order u/s 143 of the UP Zamindari Abolition & Land Reforms Act, 1951 will not have any impact on the acquisition proceedings. It is stated in paragraph-10 of the counter affidavit, that the establishment of new market yard will have great impetus to socio-economic gain to the local people specially the farmers and the same is for public purpose. In paras 13 and 14 it is stated that the land is urgently required for public purpose and therefore at this stage the Petitioners cannot claim that there was no occasion to invoke urgency clause. The Mandi Samiti has already deposited the compensation as per requirement of the Act.

9. Shri B.D. Mandhyan submits that in Bhagat Singh Vs. State of U.P. and Others, the Supreme Court held relying upon the earlier judgment in Hari Singh and Others Vs. State of U.P. and Others, ; Aflatoon and Others Vs. Lt. Governor of Delhi and Others, ; Om Prakash v. State of U.P. AIR 1998 SCW 2507 that where there are no allegations of malafides, and that with reference to the plan for construction of market yard, the plots are necessary in as much as the market had to be approached from a side, where Appellant's property was located and the government was able to get some land in ceiling proceedings and from Gaon Sabha, it cannot be said that there was no need to acquire Appellant's land for the market and the remaining land was sufficient. The Supreme Court further held in para 9 and 10 that establishment of market yard is not merely one of mere urgency but one which makes it necessary to dispense with enquiry u/s 5A. The Supreme Court held, "the existing market yard is situated in a very congested locality having no scope for expansion and the place where the market is now located is not sufficient to cater to the growing needs of its constituents. There is no adequate space for free movement and parking of trucks/ bullock carts etc. nor for providing necessary shelter for those who come to the market. The existing market is also devoid of any amenities necessary for hundreds of people who visit the market every day or for the bullocks which are being used to draw the carts. During rainy season it becomes well-nigh impossible to find out suitable shelters for the farmers and producers of vegetables. It has become necessary to provide amenities and also construct roads in a planned manner." In para 10 of the judgment the Supreme Court recorded its opinion with the subjective satisfaction for dispensing with the enquiry u/s 5-A is based on sufficient material and cannot be faulted. The photographs as to the filthy state of the present Mandi with garbage and stray cattle and pigs were shown to arrive at findings that the place was so loathsome that it will be precarious and perhaps hazardous to store vegetables or food grains in the existing market. The Supreme Court was therefore, of the view in the circumstances of the case, that the urgency clause was rightly invoked by the State Government. There was also enough precedents in connection with acquisition of land for markets where Section 5-A has been dispensed with and such action was upheld.

10. In para 11 the Supreme Court held that in case of similar acquisition of market, where Section 5-A enquiry was dispensed with on the ground of urgency, the High Court in Satyendra Prasad Jain v. State of U.P. 1987 AWC 382, held as follows:

The question herein is whether the state was justified in dispensing the requirements of enquiry contemplated u/s 5-A. It could be taken judicial notice of, that in regard to agricultural produce there were no proper market facilities. There were innumerable charges, levies and exactions which the agriculturists were required to pay without having any say in the proper utilization of the amount paid by them. The Government of India and the various committees and commissions appointed to study the condition of agricultural markets in the country had stressed the need to provide proper market yards for the sale and

purchase of agricultural produce. The planning commission also stressed long ago in this regard. The Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 has been enacted to provide for the regulation of sale and purchase of agricultural produce and for the establishment, superintendence and control of markets therefore, in Uttar Pradesh. The proposed construction of market and market yard by the Mandi Samiti is, therefore, a step forward to ameliorate the conditions of producers with due representation to them in the Mandi Samities for the fair settlement of disputes relating to their transactions. It is a long felt need which is said to have been included in the planned Development Scheme.

11. Shri Mandhyan submits that in *Bhagat Singh*, the Supreme Court further observed that in *Smt. Kailashwati Vs. State of U.P. and Another*, , similar observations were made justifying the dispensation of enquiry u/s 5-A in as much as there was immediate urgency, as there was acute scarcity of goods and warehouses, where food grains purchased by the Government had to be stocked.

12. Shri Mandhyan has also relied upon the judgment in *First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another*, ; *Mahendra Singh v. State of U.P.* 2002 (47) ALR 706 ; *Manveer Singh and Another Vs. State of U.P. and Others*, ; *Smt. Manjulata Agrawal v. State of U.P.* (2007) 9 ADJ 447 ; *Smt. Manorama Devi and others Vs. State of U.P. and others*, and *Ranjeet Singh Chauhan v. State of U.P.* 1997 ALR 1716. He has also relied upon unreported judgment in *Kailash Jaiswal v. State of U.P. Writ Petition No. 37007 of 2008* decided on 4.9.2008 by the High Court upholding the application of Section 17(1) and (4) dispensing with the enquiry u/s 5-A of the Act for construction of market yard.

13. The Supreme Court in its latest judgments in *Essco Fabs Pvt. Ltd. v. State of Haryana* (JT 2008 (12) 315); *Babu Ram and Another Vs. State of Haryana and Another*, ; *Tika Ram and Others Vs. State of U.P. and Others etc. etc.*, ; *Anand Singh and Another Vs. State of Uttar Pradesh and Others*, ; *State of West Bengal v. Prafulla Churan Law* (2011) 3 AD SC 296; and *Dev Sharan v. State of U.P.* (2011 SCC L. Com 189), indicated a shift in approach, in applying Section 17(1) and Section 17(4) of the Act for dispensing u/s 5-A in the matters of acquisition of land for public purpose. These judgments were noticed by this Court in *Smt. Mithilesh Kumari and Ors. v. State of U.P. and Ors.* 2010 (10) ADJ 426 (DB). In this case the land was required for construction of Sub Market Yard at Village Islamganj, Pargana and Tehsil Jalalabad, Distt. Saharanpur. The Court held that the two notes submitted by the Department of Agricultural Marketing and Agriculture Foreign Trade do not refer to any fact regarding urgency. The proposal of the Commissioner and the Director, Land Acquisition Directorate did not refer to any urgency invoking Section 17(4) of the Act. The proposals submitted did not mention of Section 17(4) of the Act. Following the judgment in *Anand Singh v. State of U.P.*, (supra), by the Supreme Court, and in *Ramesh v. State of U.P. Writ Petition No. 18918 of 2006* decided on 18.12.2007

(All.) (DB), the Division Bench quashed the notification u/s 4(1) in so far as declaration was made u/s 17(4) dispensing with requirement of Section 5A, and directed that the Petitioner and other tenure holders, whose land is sought to be required are entitled to file their objections u/s 5A(1) of the Act. The Court directed necessary corrigendum to be issued giving opportunity to the Petitioners and other tenure holders to file objections within 30 days and to take further proceedings in accordance with law.

14. In *Radhey Shyam (dead) through L Rs* (Civil Appeal No. 3261 of 2011) decided by the Supreme Court on 14.4.2011 the following principles were reiterated:

53. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good. - *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, , *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, and *Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.*, .

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly - *D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others*, ; *State of Maharashtra and Another Vs. B.E. Billimoria and Others*, and *Dev Sharan v. State of U.P.* Civil Appeal No. 2334 of 2011 decided on 7.3.2011.

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the land owner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. Therefore, before excluding the application of Section 5-A, the concerned authority must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry u/s 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power u/s 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the concerned authorities did not apply mind to the relevant factors and the records.

(vii) The exercise of power by the Government u/s 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in Sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under Sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power u/s 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government u/s 17(1) and/or 17(4).

The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years.

Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A (1) and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the Court should view the invoking of Section 17(1) and/or 17(4) with suspicion and carefully scrutinize the relevant record before adjudicating upon the legality of such acquisition.

15. The Supreme Court thereafter observed in the facts of that case that there was no justification for the State Government to invoke urgency provisions containing Section 17(1) excluding application of Section 5-A for acquisition of land for planned industrial development of Distt. Gautam Budh Nagar. In para 54 to 62 of the judgment the Supreme Court held:

54. The stage is now set for consideration of the issue whether the State Government was justified in invoking the urgency provision contained in Section 17(1) and excluding the application of Section 5-A for the acquisition of land for planned industrial development of District Gautam Budh Nagar. A recapitulation of the facts shows that upon receipt of proposal from the Development Authority, the State Government issued directions to the concerned authorities to take action for the acquisition of land in different villages including village Makora. The comments/certificate signed by three officers, which was submitted in the context of Government Order dated 21.12.2006 was accompanied by several documents including proposal for the acquisition of land, preliminary inquiry report submitted by the Amin, Land Acquisition, copies of khasra khatauni and lay out plan, 10 per cent of the estimated compensation and a host of other documents. In the note dated nil jointly signed by Deputy Chief Executive Officer, Greater Noida, Collector, Gautam Budh Nagar and four other officers/officials, the following factors were cited in justification of invoking the urgency provisions:

- a. The area was notified under Uttar Pradesh Industrial Areas Development Act, 1976 for planned industrial development.
- b. If there is any delay in the acquisition of land then the same is likely to be encroached and that will adversely affect the concept of planned industrial development of the district.
- c. Large tracts of land of the nearby villages have already been acquired and in respect of some villages, the acquisition proceedings are under progress.
- d. The Development Authority urgently requires land for overall development, i.e. construction of roads, laying of sewerages, providing electricity, etc. in the area.
- e. The development scheme has been duly approved by the State Government but the work has been stalled due to non-acquisition of land of village Makora.
- f. Numerous reputed and leading industrial units of the country want to invest in the State of Uttar Pradesh and, therefore, it is 70 extremely urgent and necessary that land is acquired immediately.
- g. If land is not made available to the incoming leading and reputed industrial concerns of the country, then they will definitely establish their units in other States and if this happens, then it will adversely affect employment opportunities in the State and will also go against the investment policy of the Government.
- h. If written/oral objections are invited from the farmers and are scrutinized, then it will take unprecedented long time and disposal thereof will hamper planned development of the area.
- i. As per the provisions of the Act, there shall be at least one year's time gap between publication of the notifications under Sections 4 and 17 and Section 6.

55. In our view, the above noted factors do not furnish legally acceptable justification for the exercise of power by the State Government u/s 17(1)

because the acquisition is primarily meant to cater private interest in the name of industrial development of the district. It is neither the pleaded case of the Respondents nor any evidence has been produced before the Court to show that the State Government and/or agencies/instrumentalities of the State are intending to establish industrial units on the acquired land either by itself or through its agencies/instrumentalities. The Respondents have justified the invoking of urgency provisions by making assertions, which are usually made in such cases by the executive authorities i.e. the inflow of funds in the State in the form of investment by private entrepreneurs and availability of larger employment opportunities to the people of the area. However, we do not find any plausible reason to accept this tailor-made justification for approving the impugned action which has resulted in depriving the Appellants" of their constitutional right to property.

Even if planned industrial development of the district is treated as public purpose within the meaning of Section 4, there was no urgency which could justify the exercise of power by the State Government u/s 17(1) and 17(4). The objective of industrial development of an area cannot be achieved by pressing some buttons on computer screen. It needs lot of deliberations and planning keeping in view various scientific and technical parameters and environmental concerns. The private entrepreneurs, who are desirous of making investment in the State, take their own time in setting up the industrial units. Usually, the State Government and its agencies/instrumentalities would give them two to three years" to put up their factories, establishments etc.

Therefore, time required for ensuring compliance of the provisions contained in Section 5-A cannot, by any stretch of imagination, be portrayed as delay which will frustrate the purpose of 72acquisition. In this context, it is apposite to note that the time limit for filing objection u/s 5-A(1) is only 30 days from the date of publication of the notification u/s 4(1). Of course, in terms of Sub-section (2), the Collector is required to give opportunity of hearing to the objector and submit report to the Government after making such further inquiry, as he thinks necessary. This procedure is likely to consume some time, but as has been well said, "Principles of natural justice are to some minds burdensome but this price-a small price indeed-has to be paid if we desire a society governed by the rule of law.

56. In this case, the Development Authority sent proposal some time in 2006. The authorities up to the level of the Commissioner completed the exercise of survey and preparation of documents by the end of December, 2006 but it took one year and almost three months to the State Government to issue notification u/s 4 read with Section 17(1) and 17(4). If this much time was consumed between the receipt of proposal for the acquisition of land and issue of notification, it is not possible to accept the argument that four to five weeks within which the objections could be filed under Sub-section (1) of Section 5-A and the time spent by the Collector in making inquiry under Sub-section (2) of

Section 5-A would have defeated the object of acquisition.

57. The apprehension of the Respondents that delay in the acquisition of land will lead to enormous encroachment is totally unfounded. It is beyond the comprehension of any person of ordinary prudence to think that the land owners would encroach their own land with a view to frustrate the concept of planned industrial development of the district.

58. The perception of the Respondents that there should be at least one year's time gap between the issue of notifications under Sections 4 and 6 is clearly misconceived. The time limit of one year specified in Clause (ii) of the proviso to Section 6(1) is the outer limit for issue of declaration. This necessarily means that the State Government can complete the exercise under Sections 5-A and 6 in a shorter period.

59. The only possible conclusion which can be drawn from the above discussion is that there was no real and substantive urgency which could justify invoking of the urgency provision u/s 17(1) and in any case, there was no warrant to exclude the application of Section 5-A which, as mentioned above, represent the statutory embodiment of the rule of audi alteram partem.

60. We also find merit in the Appellants' plea that the acquisition of their land is vitiated due to violation of the doctrine of equality enshrined in Article 14 of the Constitution. A reading of the survey report shows that the committee constituted by the State Government had recommended release of land measuring 18.9725 hectares. Many parcels of land were released from acquisition because the land owners had already raised constructions and were using the same as dwelling units. A large chunk of land measuring 4.3840 hectares was not acquired apparently because the same belong to an ex-member of the legislative assembly. The Appellants had also raised constructions on their land and were using the same for residential and agricultural purposes. Why their land was not left out from acquisition has not been explained in the counter affidavit filed by the Respondents. The High Court should have treated this as sufficient for recording a finding that the Respondents had adopted the policy of pick and choose in acquiring some parcels of land and this amounted to violation of Article 14 of the Constitution. Indeed it has not been pleaded by the Respondents that the Appellants cannot invoke the doctrine of equality because the other parcels of land were illegally left out from acquisition.

61. The argument of the learned senior counsel for the Respondents that the Court may not annul the impugned acquisition because land of other villages had already been acquired and other land owners of village Makora have not come forward to challenge the acquisition of their land cannot be entertained and the Court cannot refuse to protect the legal and constitutional rights of the Appellants' merely because the others have not come forward to challenge the illegitimate exercise of power by the State Government. It is quite possible that others may have, due to sheer poverty, ignorance and similar handicaps not

been able to avail legal remedies for protection of their rights, but that cannot be made basis to deny what is due to the Appellants.

62. In the result, the appeal is allowed. The impugned order is set aside and the writ petition filed by the Appellants is allowed. Respondent No. 1 is directed to pay cost of Rs. 5,00,000/- to the Appellants for forcing unwarranted litigation on them. It is, however, made clear that the Respondents shall be free to proceed from the stage of Section 4 notification and take appropriate action after complying with Section 5-A(1) and (2) of the Act. It is needless to say if the Appellants" feel aggrieved by the fresh exercise undertaken by the State Government then they shall be free to avail appropriate legal remedy.

16. The facts of the present case are the same as in Smt. Mithlesh Kumari (supra). There is no such material on record nor any averment has been made in the counter affidavit, which may show the application of mind and to justify the decision of the State Government to dispense with the opportunity to file objections u/s 5A of the Act. There are no such pathetic or pitiable conditions such as in the case of Bhagat Singh of the market pleaded or established to justify invocation of urgency for immediate construction of the market yard. The market yards are not constructed and put in place in a few days. It takes months and some time years to construct the market yards. The State Government did not have sufficient material, nor recorded its satisfaction, in fact, for invoking the provisions of urgency for acquisition of land applying Section 17 (1) and (4) of the Act.

17. The ground of selection of land and availability of alternate land is not much relevant to the acquisition for public purpose unless it is shown that the land is wholly unsuitable or any alternate site, equally good for use is offered.

18. Both the writ petitions are partly allowed. The invocation of Sub-section (1) of Section 17, Sub-section (4) of Section 17 of the Act in the notification u/s 4 of the Act dated 29.7.2008 is set aside. The notification u/s 6 of the Act dated 03.8.2009 is also consequently set aside. It will be open to the State Government to issue fresh notification u/s 4(1) of the Act without applying the provisions of Sub-section (1) and (4) of Section 17 of the Land Acquisition Act, 1894, to publish and give notice to the tenure holders whose land is sought to be acquired, informing them that they are entitled to file their objections u/s 5-A of the Act, and thereafter to proceed in accordance with law. The Petitioners are held entitled to costs of prosecuting the writ petitions in the High Court.