

(2011) 08 AHC CK 0226

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 30759 and
5236,10424,16285,40328,46065, 52540,
52543,52544,52799,55004,55005,55006,55008, 55009, 55011,
55012, 55013,
55014,55016,55017,55018,55020,55021,55255,57238, 57243,
58094,60232,60384,62424,63772,63961,6489

Rajendra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition (Companies) Rules, 1963 — Rule 4, 5, 6, 7, 8
Land Acquisition Act, 1894 — Section 11A, 17, 17(1), 17(2), 17(4)
National Capital Region Planning Board Act, 1985 — Section 18, 19, 20
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 3

Citation : (2011) 10 ADJ 323 : (2012) 2 AWC 1287

Hon'ble Judges : Ashok Srivastava, J;Amitava Lala, J

Bench : Division Bench

Judgement

Hon"ble Amitava Lala, J.—All the aforesaid writ petitions being connected have been placed before this Court, therefore, the same have been heard analogously and are being decided by this common judgment.

2. Petitioners in all the aforesaid writ petitions describe themselves to be owners and/or possessors of the respective lands in different villages of District Ghaziabad. The common submission of all the petitioners is that their lands have been acquired under the impugned notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter in short called as the "Act") for the purpose of developing Hi-Tech Township without proper notice to them. It has further been contended that there is no necessity to invoke the urgency clause of acquisition as provided u/s 17(4) of the Act dispensing with provisions of Section 5-A of the Act. Therefore, they have been deprived of submitting their objections to the proposed acquisition.

3. Mr. A.B. Saran, learned Senior Counsel, and Mr. Shashi Nandan, learned Senior Counsel (who has subsequently withdrawn his writ petition) duly assisted by other Learned Counsel appearing for the petitioners have contended at the relevant point of time that establishment of Hi-Tech Township is a camouflage and it does not denote anything which can be understood to include the public purpose. In effect, the acquisition in question has not been made for any public purpose but only for the purpose and benefit of a private company, for which Part- VII of the Act will apply and not Part-II. In further, Hi-Tech Township Policy of the State Government is also in violation of Rules 4, 5,6, 7 and 8 of the Land Acquisition (Companies) Rules, 1963 (hereinafter in short called as the "Rules, 1963"). Rule 9(2) of the Rules, 1963 prohibits invocation of power conferred u/s 17 of the Act in case acquisition is to be done for the companies. Therefore, the impugned notifications as well as the proceedings pursuant thereto are liable to be quashed.

4. Learned Counsel appearing for the petitioners have submitted before this Court that the State Government floated a scheme vide Government Order dated 22nd November, 2003 for the purpose of development of Hi-Tech Townships by private company or companies. Pursuant to such Government Order, on 29th August, 2006 the State Government issued a notification u/s 4 read with Section 17(4) of the Act, which was challenged before this Court by means of several writ petitions on the ground that the land in dispute therein was proposed to be acquired for development of Hi-Tech Township through a private company, therefore, provisions of Part-II of the Act are not applicable but the provisions of Part-VII of the Act will be applicable while issuing the notification u/s 4 of the Act. Further, there was no material before the State Government to invoke the provision of urgency u/s 17(4) of the Act and without any subjective satisfaction the notification u/s 4 of the Act was issued. However, all such writ petitions were dismissed by this Court as premature. Against such order of dismissal, the petitioners therein preferred special leave petitions (hereinafter called as "SLP") before the Supreme Court wherein interim order has been passed on 22nd August, 2007 directing the parties to maintain status quo keeping the SLP pending. During the pendency of SLP, the State Government has issued fresh notifications, which are impugned in the present writ petitions.

5. The State Government has acquired the land for development of Hi-Tech Township in the name of Ghaziabad Development Authority. A memorandum of understanding was executed between Ghaziabad Development Authority and the private company on 30th November, 2005. From the perusal of such memorandum of understanding it transpires that the entire development has been supposed to be done by a private company, for which the State Government has given relaxation in the stamp duty to the private builder which will result in the huge financial loss to the State Government.

6. The petitioners came to know from the counter-affidavit of the State respondents that the company acquiring the land for development of Hi-Tech

Township will obtain 75% land by private negotiations and thereafter, if necessary, upto 25% land can be acquired by the State under the Act. As per the memorandum of understanding executed between Ghaziabad Development Authority and the private company, it is admitted position that the land proposed to be acquired under the Act shall not exceed 25% of the total area of Hi-Tech Township. Therefore, out of maximum 3000 acres land required for development of Hi-Tech Township, only upto 750 acres land can be subject-matter of acquisition. But total land proposed to be acquired is 1144.805 acres, which is in excess of 750 acres land.

7. By a Government Order dated 17th September, 2007 Hi-Tech Township Policy, 2007 was issued by the Government of Uttar Pradesh for the purpose of development of Hi-Tech Township in Uttar Pradesh through private investors. Paragraph-11 of such Policy provides that in one city/location maximum of two Hi-Tech Townships shall be permitted within a notified area and area adjoining it upto a distance of 10 Kms., whereas Paragraph-12 thereof provides that one township upto 3000 acres shall be permissible to a developer company. Paragraph-15 of such policy further provides that the developer company may purchase the land through direct negotiations with the land owners and the concerned Government agency shall provide necessary cooperation to the developer company for acquiring land under the provisions of the Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997, which is commonly known as "Karar Niymawali, 1997", (hereinafter in short called as the "Rules, 1997"). Acquisition of land under the Act or the Uttar Pradesh Housing and Development Board Act, 1965 shall be carried out in special circumstances only for the remaining pockets, but shall not exceed 25% of the total area of the Hi-Tech Township.

8. Ultimately, they have relied upon certain judgments about applicability of Section 17(4) of the Act. In Union of India (UOI) and Others Vs. Mukesh Hans etc., a three Judges' Bench of the Supreme Court has held that the limited right given to an owner/person interested u/s 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed u/s 17(4) of the Act. Therefore, if the appropriate Government decides to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5-A. However, it is well settled that applicability of each and every law is required to be seen from the factual aspect of such case. In Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, it has been held by the Supreme Court that urgency for invoking Section 17 of the Act should be one arising naturally out of circumstances, which exist when the decision to acquire the land is taken and not such, which is the result of serious lapse or gross delay on the part of the acquiring authority. From Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, we find the Supreme Court held that Section 5-A of the Act confers a valuable and important right in favour of a person whose

lands are sought to be acquired which is akin to fundamental right. The State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid. In *Kashama Sahakari Avas Samiti Ltd. v. State of U.P. and Others* 2006 (7) ADJ 133 (DB) a Division Bench of this Court held that if notification is issued with the clause of exception u/s 17(4) of the Act, it can be quashed if it suffers from vice of arbitrariness. In *Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another*, factually on 01st August, 2001 i.e. after about twenty years of the first notification of 1982 and nine years after rejection of prayer of the appellant for change of user, the Government again issued notification u/s 4(1) for acquisition of land for the development and utilisation for construction of connecting road with urgency clause u/s 17 of the Act and a valuable right of raising objections u/s 5-A was taken away in an arbitrary manner. On the very next day i.e. on 02nd August, 2001 final notification u/s 6 of the Act was issued by the Government. In such circumstances, the Supreme Court interfered with the matter and held that the actions of issuance of urgency clause u/s 17(4), dispensing with inquiry u/s 5-A and issuance of final notification u/s 6(1) are required to be quashed and quashed the same accordingly. In *Mahender Pal and Others v. State of Haryana and Others* 2009 (6) SCJ 80 the Supreme Court has held that valuable right of hearing and particularly in a case of this nature could have been taken away only if conditions precedent for exercise of this emergency power stood satisfied. Sub-section (4) of Section 17 of the Act is an exception to Section 5-A of the Act. From *Anand Singh and Another v. State of U.P. and Others* 2010 (5) AWC 5386 (SC) we find that the Supreme Court has held that the use of the power of urgency and dispensation of enquiry u/s 5-A of the Act by the Government in a routine manner for the "planned development of the city" or "development of residential area" and thereby depriving the owner or person interested of their valuable right u/s 5-A will not meet the statutory test nor could be readily sustained. It should be justified on the basis of relevant material before the State Government.

9. Before going into the core issue we have checked up each and every writ petition and found that though the parties arrived at a consensus for composite hearing upon being connected but factually the acquisition proceedings are different. Against this background, Mr. M.C. Chaturvedi, learned Chief Standing Counsel appearing for the State, and Mr. Ashwani Kumar Misra, Learned Counsel appearing for the Ghaziabad Development Authority, have stated that for the project in question the total area, which has been finally acquired vide declarations issued u/s 6 of the Act on different dates, is 355.6539 acres situated in four different villages i.e. Naifal, Shahpur Bamhetta, Bayana and Sadikpur @ Kazipura. So far as Village Mehrauli is concerned, no area has actually been acquired as following the notification u/s 4 of the Act no declaration has been made so far. Moreover, since the date of issuance of notification u/s 4 of the Act one year period has passed, the acquisition proceeding for the village Mehrauli

has lapsed and thereby, the writ petitions relating to such village have been rendered infructuous. So far as acquisition proceeding of Village Dasna is concerned, they have submitted that since acquisition proceeding of Village Dasna does not relate to the project in question but relates to another project, challenging which another bunch of writ petitions is pending, therefore, writ petitions of Village Dasna may be delinked. By placing a chart before this Court to show whether the land acquired is more than 25% or not and also to clarify their aforesaid submissions, they further submitted that the bunch of writ petitions, relating to acquisition of land for Hi-Tech Township at Ghaziabad, challenges five separate notifications issued u/s 4 of the Act and declarations issued u/s 6 of the Act. The total area, acquired by the said five notifications under challenge, is only that which are included in the declaration u/s 6 of the Act. The chart is reproduced hereunder:

Sl. Nos.

Name of Village

Dates of Notifications u/s 4

Dates of Declaration u/s 6

Area finally acquired & included in declaration u/s 6

1

Shahpur Bamhetta

27.11.2009

7.8.2010

44.9081 hectares, or 110.9679 acres.

2

Sadikpura alias Kazipura

27.11.2009

8.9.2010

14.381 hectares, or 35.535 acres.

3

Naifal

27.11.2009

23.12.2009

34.390 hectares, or 84.978 acres.

7.8.2010

15.7071 hectares, or 38.812 acres.

4

Bayana

27.11.2009

23.12.2009

23.649 hectares, or 58.437 acres.

7.8.2010

10.896 hectares, or 26.924 acres.

5

Mehrauli

27.11.2009

No declaration

No area acquired as the acquisition itself lapsed.

10. Thus, the total area acquired for the Hi-Tech township in question is 355.6539 acres. This is less than 25% of the original project area of 1500 acres. The area of project, as per revised plan stands at 4494 acres and, therefore, the area acquired is even less than 10 % of the project area, which is strictly as per the policy of the State.

11. Against this background, we have also verified the position, as stated above, from the records. We are of the view that since in respect of the village Mehrauli no declaration u/s 6 of the Act has been issued and one year period has expired, the acquisition proceedings of this village have lapsed and thereby, the writ petitions challenging the notification u/s 4 of the Act dated 27th November, 2009 for the village Mehrauli have become infructuous. Accordingly, Civil Misc. Writ Petition Nos. 52799 of 2010, 55004 of 2010, 55005 of 2010, 55006 of 2010, 55008 of 2010, 55009 of 2010, 55011 of 2010, 55012 of 2010, 55013 of 2010, 55014 of 2010, 55016 of 2010, 55017 of 2010, 55018 of 2010, 55020 of 2010, 55021 of 2010, 55255 of 2010 and 62424 of 2010, which challenge the notification u/s 4 of the Act in respect of the Village Mehrauli, are dismissed as infructuous, however, without imposing any cost.

12. So far as writ petitions relating to Village Dasna, being Civil Misc. Writ Petition Nos. 68179 of 2010, 68320 of 2010 and 5486 of 2011 are concerned, since they relate to some other project, these three writ petitions are delinked with this bunch and are directed to be listed before the appropriate Bench. So far as Writ Petition No. 44977 of 2011 is concerned, it also appears to have wrongly been connected with this bunch, therefore, this writ petition is also delinked with this bunch to appear before the appropriate Bench.

13. In view of the aforesaid, now only the writ petitions challenging the acquisition proceedings of Villages Naifal, Bayana, Shahpur Bamhetta and Sadikpur @ Kazipura remain for consideration. Therefore, upon clarifying the position we deal with the arguments of the respondents on the core issue involved in the remaining matters in respect of these four villages and the order being passed hereunder will be applicable only in respect of writ petitions of such four villages.

14. Mr. Jaideep Narain Mathur, learned Additional Advocate General, appeared alongwith Mr. M.C. Chaturvedi, learned Chief Standing Counsel, Mr. Ramanand Pandey and Dr. Y.K. Srivastava, both learned Standing Counsel, and have brought to the notice of this Court certain facts before going into the question of law, which are as under.

15. The land, which is sought to be acquired and is proposed to be developed as Hi-Tech Township, is situated in different villages in District Ghaziabad. These villages form part of the development area notified u/s 3 of the Uttar Pradesh Urban Planning and Development Act, 1973 (hereinafter in short called as the "Act, 1973"). In accordance with the provisions of the Act, 1973, the Master Plan-2021 has been enforced for Ghaziabad indicating different land use of areas falling within the development area of Ghaziabad Development Authority. Land use was specifically provided in the Master Plan for establishment of Hi-Tech Township/ urban expansion area. The aforesaid Master Plan-2021 has been brought into effect on 15th July, 2005. Prior to it, objections were invited upon the proposed land use of the area in question for Hi-Tech Township, but no objections against it were made by anybody, and thus it has attained finality.

16. District Ghaziabad is an urban town situated in National Capital Region (hereinafter in short called as "NCR") close to New Delhi. Because of its proximity with the National Capital, there has been increasing pressure of urbanization in this town. During last 10 years i.e. from 1991 to 2001 the rate of increase of population of Ghaziabad has been 89.25%, whereas during such period rate of increase of population of Delhi was 46.31% and of Mumbai 29.94%. These figures can demonstrate the massive extent of urbanization at Ghaziabad. The State Government has been actively monitoring such increase in urbanisation with an intent to regulate it in such a manner that it results in development of areas as planned urban townships and this is being done through the State agencies, like, Uttar Pradesh Avas Evam Vikas Parishad, Ghaziabad Development Authority and other statutory authorities. In a report prepared by Housing and Urban Development Corporation Limited on the basis of census of 2001, housing shortage in the State of U.P. in urban areas has been assessed as 7,85,555. Therefore, it can be inferred that demand is there since 200+, particularly in view of high growth of Gross Domestic Product (GDP) and urbanisation. The State has been essentially dependent on its agencies, like, Uttar Pradesh Housing Board, Industrial Area Development Authority and other development authorities created under the Act, 1973 to handle such situation and also to make provisions

for increased availability of houses in urban areas, but the State has felt that existing measures are not sufficient to meet the growing demand. Therefore, one of the alternatives has been explored to include private participation to provide more houses in the form of planned urban townships. Against this background, the State Government took a policy decision with regard to development of Hi-Tech Townships under the private sector involving a minimum investment of Rs. 750 crores and development of land of area approximately 1500 acres within a time frame of five years, and for grant of special package to the private developers for the aforesaid purpose detailed guidelines were laid down.

17. The State Government issued a Government Order dated 18th May, 2006 laying down Hi-Tech Township Policy-2006. Such policy takes note of the requirement of housing units during the 10th Five Year Plan which upto the year 2006-07 was assessed to be 16 lacs in the State of Uttar Pradesh i.e. approximately 3.20 lacs housing units per year. The policy further takes note of the existing capacity of the State agencies, as referred to above, which at best can provide about one lac residential units in a year. Thus, the resultant shortfall is nearly 2.20 lacs houses per year. Such being the magnitude of gap between availability and demand of housing units, it has made major adverse impact upon the management and planning of development of urban areas. That apart, the mushrooming unorganized growth of urban areas and their likely adverse impact upon civil facilities are the areas of major concern for the State. The Central Government has also been concerned about the issue of planned urbanization and towards this end, from time to time, National Urban Housing and Habitat Policies have been formulated in the years 1998 and 2005, which have laid special emphasis on taking steps to solve the housing problem. The relevant parts of such Policies of 1998 and 2005 are as follows:

National Housing and Habitat Policy-1998

3.1.2 The State Governments would-

liberalise the legal and regulatory regime to give a boost to housing and supporting infrastructure.

promote private sector and co-operatives in undertaking housing construction for all segments in urban and rural areas.

define the role of public and private agencies particularly in the infrastructure sector.

undertake appropriate reforms for easy access to land.

prepare long term programmes to tackle problems in housing.

3.3 Housing Boards Corporations/Development Authorities and other public agencies.

The private sector has higher efficiency but has been hampered by legal constraints in undertaking housing land infrastructure operations. The efforts of

the public and private sectors would be combined for higher synergy which should work to the advantage of the poor and the vulnerable sections.

Their role should be to facilitate availability of land. They need to move away from direct construction activity.

The public agencies need to forge partnerships with the private sector and co-operatives for housing construction in an efficient manner.

Keeping the user's interest in mind they should devise flexible schemes to meet the user's requirement. They should also provide land at concessional rates for housing for the poor and the needy.

They should be restructured to eliminate their dependence on budgetary support.

3.4 Role of corporate, private and cooperative sectors-

The Corporate, Private and Co-operative Sectors are to take the lead role in terms of land assembly, construction of houses and development of amenities within the projects.

Corporate sector is to be encouraged to provide for housing for staff and to facilitate their employees in acquiring their own houses.

National Urban Housing and Habitat Policy-2005

The Need for Policy.

Shelter is one of the basic human needs just next to food and clothing. Need for a National Housing and Habitat Policy emerges from the growing requirements of shelter and related infrastructure. These requirements are growing in the context of rapid pace of urbanization, increasing migration from rural to urban centres in search of livelihood, mismatch between demand and supply of sites & services at affordable cost and inability of most new and poorer urban settlers to access formal land markets in urban areas due to high costs and their own lower incomes, leading to a non-sustainable situation. This policy intends to promote sustainable development of habitat in the country, with a view to ensure equitable supply of land, shelter and services at affordable prices.

Urbanisation and Development Urbanisation and development go together and rapid pace of development leads to rapid growth of urban sector. Urban population of India is likely to grow from 285.3 million in 2001 (Census 2001) to 360 million in 2010, 410 million in 2015, 468 million in 2020 and 533 million in 2025 (Annexure-1), as per the projections based on historical growth pattern of population (1991-2001).

India is undergoing a transition from rural to semi-urban society. Some States (Maharashtra, Mizoram, Tamilnadu and Goa), as per Census 2001, have already attained urbanization level of 35 to 50%. As per the projections based on historical growth pattern (1901-2001), nearly 36% of India's population is likely to be urbanized by 2025. However, since the current pace of development (with

around 7% growth of GDP) is particularly high and will increase further with growing investments, the actual growth of urban population is likely to be more than these projections.

3.1.2 The State Government would:

Prepare the State Urban Housing & Habitat Policy.

Review the legal and regulator regime to give a boost to housing and supporting infrastructure.

Promote and incentivise private sector and co-operatives in undertaking housing and infrastructure projects for all segments in urban areas.

3.1.3 The Urban Local Governments/Development Authorities would-

Promote planning of housing and industrial estates together with infrastructure services including roads, safe water supply, waste.

3.4 Private and Co-operative Agencies would:

Undertake an active role in terms of land assembly, construction of houses and development of amenities within the projects.

Work out schemes in collaboration with the public sector institutions for slum reconstruction on cross subsidization basis.

Create housing stock on ownership and rental basis.

5. Specific Action Areas

5.1 Land Public agencies would continue to undertake land acquisition for housing and urban services alongwith more feasible alternatives like land sharing and land pooling arrangements, particularly in the urban fringes, through public and private initiative with appropriate statutory support. Statutory cover to land acquisition by for private builders for housing and urban Infrastructure may also be considered subject to guidelines.

18. The State Government has also come out with its policy decision on the issue of providing more houses in urban areas and also for planned urban development. The Urban Housing Policy-1995 of the State Government clearly provides that the State Government shall make endeavour to facilitate the development and construction work in private sector/ co-operative sector and to remove difficulties faced by them and also to strengthen them in the task of housing construction. The policy specifically asserts that the role of public authorities would be that of "facilitator" instead of "provider". Further emphasis laid in the policy is to promote private participation in the task of urbanization and construction of additional housing units. In this regard, reference of Clause 4.2.1 and 4.2.5 of the Urban Housing Policy-1995 can be seen. The emphasis laid in associating private participation is also based upon the fact that such huge quantum of funds necessary for establishment of Hi-Tech Townships may not be

available with the State and, therefore, instead of burdening the tax-payers, private investment can be brought in.

19. In this background, in order to invite private participation for development of Hi-Tech Townships, initially an exercise was undertaken in December, 2003 but as certain shortcomings were noticed, fresh advertisements were made inviting proposals for development of Hi-Tech Townships. These proposals contained salient features and were widely published in various newspapers including Hindustan Times, Rashtriya Sahara, Dainik Jagran, Asian Age, Decan Herald, Decan Chronicals, Economic Times, Times of India, Indian Express, The Pioneer, Amar Ujala, Aaj, Swatantra Bharat etc. vide initial advertisement dated 16th July, 2004 offers were invited upto 16th August, 2004, which date was thereafter extended upto 15th October, 2004, and detailed terms and conditions as well as features of the scheme were duly notified in the advertisement and also in the bid document, which was referred to as being part of the advertisement. Pursuant to such advertisement, offers were received for private participation for development of Hi-Tech Townships, which was to provide for establishment of an urban township, as per State's policy, combining private investment alongwith State objective of making provision for Hi-Tech infrastructure and also provision of affordable houses for Lower Income Group and Economically Weaker Sections of the society. Total 34 offers were received by the State Government for development of 16 Hi-Tech Townships. The offers so received were duly processed by a duly constituted Technical Committee and recommendations thereof were considered by the High Power Committee chaired by the Chief Secretary of the State. Ultimately, after detailed consideration of the proposals by a High Power Committee, 6 developer companies/consortium were selected for 9 projects by a Government Order dated 21st May, 2005. Thereafter the State Government issued a Government Order dated 25th November, 2005 making compulsory provision for execution of a memorandum of understanding with the private developers. Prescribed format of memorandum of understanding was also settled by the said Government Order. In order to maintain transparency and utmost safeguards for public interest, all the policies relating to Hi-Tech Townships were duly approved by the State Cabinet. The provisions relating to invitation of proposals, its process and consideration as well as selection of private developers are result of a transparent and uniform policy of the State, which has not been questioned so far. The salient features of the project of Hi-Tech Townships, which emerge from the terms of memorandum of understanding duly executed between the concerned public authority and the private developer, are as follows:

That the second party shall comply with the following land use planning norms and regulations in the preparation of layout plan, of the proposed Hi-Tech Township;

(a) Development Area Average Density shall be 150 to 200 persons per hectare.

(b) Land use structure:

Sl. No.

Land use category

Percentage of developed area.

1.

Residential

3540

2.

Commercial & Offices

4-6

3.

Industrial (Pollution free)

46

4.

Public and semi-public

8-10

5.

Green cover, Parks, Open spaces, Playgrounds & Water Bodies.

17-20

6.

Transport & Communication

20-22

7.

Recreational

3-5

8.

Average

100

(c) Zoning regulations as applicable in the respective development area shall be followed.

(d) Building Bye-laws as applicable in the respective development area shall be

followed.

(e) Prevailing density norms shall not be applicable to housing for the Economically Weaker Sections and Low Income Groups.

That the second party shall prepare and submit a Detail Project Report (DPR) of the proposed township to the first party within 180 days from the date of signing of this MoU. The DPR shall comprise layout plan of the proposed township, land use plan, infrastructure and services development plan, important phases of development and construction works, time schedule for their commencement and completion, standards and specifications, resource mobilization, property management, operation and maintenance details etc.

That the Development Agreement shall contain detailed terms and conditions for implementation of the project in accordance with the approved DPR. The second party shall indemnify the first party against liabilities that may arise by any acts or deeds of the second party.

That the second party shall complete the Hi-Tech Township Project within a period of five years from the date of signing of the Development Agreement. However, Development Agreement would be signed provided minimum 500 acres of land as a contiguous chunk has been assembled and transferred to the second party. If there is delay in acquisition of land, extension in the project period upto one year shall be permissible by the first party and beyond that by the Government.

That the second party shall adhere to the concept and features of Hi-Tech Township as outlined in the original proposal submitted by the second party as per the Document for submission of proposals.

That the second party shall have the option to carry out the internal and external development works as per the standards and specifications laid in the approved DPR without any extra charges payable to the first party. However, connectivity to trunk services such as road connection, drainage and sewage disposal, water supply, electricity, solid waste management or any such other community facility may be extended to the second party by the concerned Government Agency on actual cost basis. If any major infrastructure such as embankment, ring road, fly over, metro, etc.. is provided by the first party during the project period consequent to which the proposed township would be directly benefited, the second party shall pay proportionate cost of such infrastructure to the first party, for which prior approval of the State Government would be necessary.

That the second party shall construct and sell 10% of the total houses/ plots to the Economically Weaker Section and another 10% houses/plots to the Lower Income Group families as per the norms and cost ceiling prescribed by the first party. Allotment of houses/plots for the above categories shall be made by a committee constituted by the State Government under the chairmanship of the District Collector/Vice-Chairman of the Development Authority.

That the land for Government and Public Sector community facilities such as police station, fire station, post office, telephone exchange, etc. shall be provided free of cost by the second party to the concerned department through the first party. The Government will facilitate establishment of above facilities in the proposed township. However, the State Government shall establish the Police Station free of cost on the land earmarked for the purpose.

That the second party shall provide basic infrastructure such as road, drainage, water supply, sanitation and electricity, etc. free of cost to the village abadis falling within the Hi-Tech Township area. The beneficiaries will pay user charges to the service provider.

That the Government policies and the relevant codes of B.I.S./I.S. relating to disaster management shall be strictly adhered to by the second party in the land use planning, infrastructure development and construction works of the proposed township.

That the first party shall have the right to supervise the implementation of project in accordance with and as per time schedule prescribed in the approved DPR and to inspect the quality of external and internal development works to ensure that they are as per the provisions of approved DPR. The second party shall pay the requisite inspection charges to the first party as per the prevailing Policy of the State Government.

That to ensure timely completion of the project as per the provisions of the approved DPR, the first party shall retain the transferable rights on 25 percent of total saleable land which shall be released in proportion to the second party on successful completion of various services to the functional stage. If the second party leaves any development work incomplete, the same shall be completed by the first party through sale of the land so retained.

That the permission if required, for generation of power for the proposed Hi-Tech Township, shall be admissible in accordance with the prevailing Energy Policy of the State Government.

That the second party shall maintain the various services of the Hi-Tech Township for which it shall have the right to collect maintenance expenditure from the allottees as per provisions of DPR. During this period the Local Bodies shall not collect house tax, water tax and sewerage tax, etc. from the residents or users of the township. However, the services may be handed over to the local bodies for maintenance at any point of time with the consent of the residents of the township.

That the first party reserves the right to make such amendments, additions and alterations or modifications in these terms and conditions as may be considered just and expedient with the consent of the second party.

That any issue which is not covered under this MoU shall be remedied as per the provisions of the Hi-Tech Township Policy- 2006 and the prevailing laws of the

land.

20. In the aforesaid manner, the very concept of establishment of Hi-Tech Townships is to provide extremely efficient modern townships to the members of the public at large. The actual beneficiary of the entire project is to be the public cause, public interest and public at large. It is with this public purpose in mind that the concept of Hi-Tech Township has been approved by the Government and is now being implemented, for which acquisition of land is proposed.

21. Since the acquisition of land proposed to be acquired under the respective notifications issued under Sections 4(1)/17(1)(4) on 27th November, 2009 and acquired u/s 6/17(1)(4) as per respective notifications of the years 2009 and 2010, which are impugned in the present writ petitions, is for establishment of a Hi-Tech Township in public interest, as per the salient features of the policy and also in terms of memorandum of understanding, the proceedings for acquisition have been validly initiated and undertaken as per the law and the provisions of the Act. Section 3(f) of the Act, as amended vide Act 68 of 1984, defines "public purpose" to include the provision of land for town planning. The proposed acquisition, therefore, is covered by the definition of public purpose, and since the acquisition is for public interest, the same is to be undertaken as per the provisions of Part-II of the Act. Thus, the acquisition in question is not for a company, therefore, the provisions of Part-VII of the Act are not, in any manner, applicable upon the acquisition in question. As per the scheme and the notification, since the establishment of Hi-Tech Township is under the control and supervision of the State Government and the Development Authority, invocation of sovereign power to acquire the land for public purpose is valid.

22. The areas proposed to be acquired are essentially being used for agricultural related activities and are not very far from the outskirts of developed urban areas. In the Master Plan also the land use is shown as for Hi-Tech Township. The State Government and the public authorities have noticed that such agricultural areas situate close to the outskirts of the developed urban limits and have tendency to be utilized for urban purposes, very often, in a haphazard and unplanned manner. Therefore, one of the objectives for establishment of Hi-Tech Township is also to eliminate possibility of such unplanned growth taking place in such areas, which are near to the outskirts of developed urban localities. The detailed project report of Hi-Tech Township has provision for all modern civic facilities for a respectable and clean living. The Hi-Tech Township, after it is completed, is likely to accommodate about one lac persons. One of the features of Hi-Tech Township also includes development of abadi areas in the existing villages, which includes their development as well. The village abadi would be provided all basic infrastructure facilities free of cost by the developer company. This will serve one of the important objectives of the State Housing Policy and public purpose. All infrastructure facilities in Hi-Tech Township including roads, sewer, drainage, water, electricity, telephone, etc. shall be provided by the developer by making arrangement from its own resources and the private

developer will not depend upon the State services for providing such public facilities.

23. In terms of the Government Order dated 17th September, 2007, the amended Hi-Tech Township Policy-2007 was issued for the purpose of development of Hi-Tech Township through private investment in the State of Uttar Pradesh, pursuant to which an amended memorandum of understanding dated 17th March, 2009 was executed between the Ghaziabad Development Authority and the private developer M/s. Uppal Chaddha Hi-Tech Private Developers. As per the amended memorandum of understanding dated 17th March, 2009, the land to be acquired under the Act shall not exceed 25% of the High Tech Township. Further the procedure for assembling the land would be governed as per the provisions contained in paragraph No. 26 of the Hi-Tech Township Policy-2007, which is being extracted below:

(26) The Developer Company/ Consortium shall submit the detailed layout plan to the Government Agency for approval only after purchase/acquisition of 60 percent land in every phase, subject to minimum of 300 acres, because it will be possible to develop a "self-contained neighbourhood/sector" with all facilities for about 25,000 population on 300 acres of land. However, it will be necessary to purchase/acquire more than 300 acres of land for approval of detailed layout plan in every subsequent phase so as to insure completion of all the development works of 1500 acres of township in maximum three phases. In case township area exceeds 15000(?) acres, the procedure for approval of detailed layout plan will be the same; however, development of the township may be completed in four phases if the township area is more than 1500 acres but up to 3000 acres, and maximum five phases if the township area is more than 3000 acres.

24. The State Government thereafter issued the impugned notifications. The urgency provisions under Sections 17(1) and 17(4) of the Act having been invoked and the provisions of Section 5-A of the Act having been dispensed with, possession of the respective lands under acquisition was taken over by the State Government and handed over to the respondent authority. Prior to issuance of notifications u/s 6/17(1) of the Act, 70% amount of the estimated compensation was duly deposited by the development authority by means of a cheque accompanied by the necessary challan form. This was in addition to the 10% compensation amount deposited earlier by the respondent-development authority. Thus, it is evident that the compensation to be awarded for the acquisition proceedings was paid from the funds controlled and managed by the local authority i.e. Ghaziabad Development Authority herein. For the purpose of fixation of the compensation amount to be paid under the Rules, 1997, the Committee, duly constituted for the purposes under the Government Order dated 23rd April, 2008, at its meeting held on 3rd February, 2010 decided the compensation amount payable under such Rules as Rs. 1100/- per square meter. Out of the total area notified for acquisition u/s 6(1)/17(1) of the Act, being 355.6539 acres, agreements under the Rules, 1997 have been executed with

tenure holders in respect of an area of 200 acres and the total amount of compensation paid under the Rules, 1997 is now Rs. 89,01,20,000/- which was earlier Rs. 36,83,97,968.00 for an area of about 83.755 acres. In view of the aforesaid, the remaining area of land, in respect of which agreements under the Rules, 1997 are yet to be executed, is approximately 156 acres, out of which the total area regarding which claims have been raised in the writ petitions is only few acres of the land.

25. It has further been submitted that under the Policy, the Development Authority shall retain the transferable rights of 25% of total saleable land, which shall be released in proportion to the private developer on successful completion of various services to the functional stage. However, if the private developer leaves any development work incomplete, the same shall be completed by the Development Authority through the sale of land so retained. Thus, it is apparent that while inviting participation of the entrepreneur/developer/ promoter, the State and the public authorities have retained their necessary control as per law and requisite safeguards have been provided to ensure the public interest, and in view of the same the land acquisition proceedings initiated pursuant to the impugned notifications are perfectly legal and valid and the present writ petitions are liable to be dismissed.

26. Ultimately, Mr. Mathur concluded by saying that the plots of land in question have already been acquired and vested absolutely in the State free from all encumbrances. Most of the petitioners have already entered into agreements with the concerned authority/Additional District Magistrate (Land Acquisition) for payments of compensation under the Rules, 1997. The tenure holders have been made payments as per the terms of the Rules, 1997 and an overwhelming majority of the land owners have accepted the compensation amount. The acquisition of land being for planned development of a township and for creation of housing and infrastructural facilities and also creating a provision for development of land for residential purposes of the poor and economically weaker section of the society, clearly falls under the purview of the expression "public purpose" as defined u/s 3(f) of the Act. The role of the private developer is only to bring in investments and its expertise in the development of the township, and thereafter the housing and infrastructural facilities created in the township would be made available to the general public, and the same would be under the control and supervision of the respondent authority. The assertion that the acquisition is for a private company is thus totally misconceived. Acquisition in question is not for a company and as such, is not covered under Part VII of the Act. Therefore, reference to the provisions of the Rules, 1963, which are a special set of rules in respect of acquisition for companies, is clearly not attracted in the present case, and any reference made to the said Rules by the petitioners is wholly misconceived. There is no vagueness in the acquisition. The entire acquisition proceedings have been made in accordance with law and as per the terms of Hi-Tech Township Policy of the State Government, which is in consonance with the terms of the National Housing Policy for creation of housing

and infrastructural facilities. Assertions made by the petitioners with regard to colourable exercise of power are clearly against the facts on record. The acquisition in question is for development of a Hi-Tech Township in accordance with the provisions of the Act, 1973 and the land use as specified in the Master Plan-2021.

27. As regards dispensation of enquiry u/s 5-A of the Act, it has further been submitted that the development of Hi-Tech Township for creation of housing and infrastructural facilities is a pressing national urgency and any delay would have an adverse effect on the project. The entire material for invocation of urgency clause u/s 17(4) of the Act was duly placed before the State Government and after considering the same and recording its subjective satisfaction, the urgency clause was invoked. The conclusion of the State Government, in view of the settled legal position, that in a given case there was urgency, is entitled to weight, if not conclusive. The provision for creation of housing accommodation has been considered to be a matter of national urgency, and judicial notice of this fact was taken by the Supreme Court in the case of State of U.P. Vs. Smt. Pista Devi and Others,

28. In Jage Ram and Others Vs. State of Haryana and Others, against the factual background of decision of the Government in the State of Haryana to acquire the land for public purpose to tackle the problem of unemployment due to lack of industries, the Supreme Court has held that when there is no denial of the fact that industrialisation of the area is in public interest, which is essentially a question to be decided by the State Government being socio-economic in nature, the Court is not in a position to go into such question. So long as it is not established that the acquisition is sought to be made for some collateral purpose or behind the declaration there is colourable exercise of power, the declaration of the Government for a public purpose is not open to challenge. Section 6(3) says that the declaration of the Government that the acquisition made is for public purpose shall be conclusive evidence that the land is needed for a public purpose. The Court cannot go behind the declaration to find out whether the land is needed for public purpose or not. So far as the question of urgency is concerned, the fact that the State Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question. The conclusion of the Government in a given case that there was urgency is entitled to weight, if not conclusive. In Rajasthan Housing Board and Others Vs. Shri Kishan and Others, it has been held by the Supreme Court that the satisfaction u/s 17(4) is a subjective one and that so-long as there is material upon which the Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. This is the principle affirmed by decisions of the Supreme Court not u/s 17(4) but also generally with respect to subjective satisfaction. In First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, the Supreme Court has held that the question of urgency of an acquisition under Sections 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 of 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 under Sections 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 authorities concerned. 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 5-A by invoking powers u/s 17(1) of the Act would not invalidate the decision itself specially when no mala fides on the part of the Government or its officers are alleged. Opinion of the State Government can be challenged in a Court of law if it could be shown that the State Government never applied its mind to the matter or that action of the State Government is mala fide. Though the satisfaction u/s 17(4) is a subjective one and is not open to challenge before a Court of law, except for the grounds already indicated, but the said satisfaction must be of the appropriate Government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Government that there was urgency, even though cannot be conclusive, but is entitled to great weight, as has been held by the Supreme Court in *Jage Ram (supra)*. 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. In *Manju Lata Agrawal (Smt) v. State of U.P. and Others* 2007 (9) ADJ 447 (DB) a Division Bench of this Court has held that there is no prohibition in law to acquire the land for the public purpose which is not in conformity or in consonance with the purpose shown in the Master Plan as the acquisition can be made in anticipation of amendment/modification of the Master Plan. In view of the aforesaid settled legal propositions, it emerges that the land can be acquired for public purpose; the expression "public purpose" cannot be defined by giving a specific definition as the same cannot be fitted in a straitjacket formula. The facts and circumstances of each case have to be examined to find out whether acquisition is for a public purpose. Right to property is a constitutional/statutory/human right of an individual person. A person interested has a right to file objections u/s 5-A of the Act though such a right is limited for pointing out that the purpose, for which the land is acquired, is not a public purpose or the land of the said person is not suitable for that purpose or the area of the land sought to be acquired would be excessive for serving the said purpose as the land cannot be acquired for some other collateral purpose. Such objections form the basis of an enquiry u/s 5-A of the Act. In exceptional circumstances where there is a grave urgency or

unforeseen emergency, the Government is competent to invoke the urgency powers contained u/s 17 of the Act and take possession before making the award. In a case of urgency or emergency Government is also competent to take a decision that in order to avoid further delay, the enquiry envisaged u/s 5-A of the Act be dispensed with, but for taking such a decision, there must be existing and relevant material before the Government and it must apply its mind as to whether the urgency is such that persons interested are to be deprived of their right to file objections u/s 5-A of the Act. Invoking the provisions under Sections 17(1) or 17(4) of the Act would not automatically dispense with the inquiry u/s 5-A. There has to be an independent decision by the State Government for such dispensation. Section 17(4) itself indicates that the "Government may direct that the provisions of Section 5-A shall not apply". The recital of such an opinion in the order or in notification is not necessary nor reasons have to be recorded in this regard in the official records. It is a case of subjective satisfaction of the Government and once the Government forms the opinion and dispenses with the enquiry u/s 5-A of the Act, the Court, in its limited jurisdiction of judicial review, cannot declare the acquisition proceedings bad. Pre or post-notification delay or lethargy on the part of the officials of the State Government is not fatal to acquisition proceedings. Very often persons interested in the land proposed to be acquired make various representations to the concerned authorities against the proposed acquisition. This is bound to result in a multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects, very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. There is no prohibition in law for acquiring the land for a public purpose, which is not in conformity with the land use shown in the Master Plan, as the Master Plan can be amended/modified by the Government. Acquisition of the land for a use other than the use for which it had been earmarked in the Master Plan can be initiated in anticipation of approval to the proposed amendment/modification of the Master Plan by the State Government. Planned development proposed should not be installed at the behest of a few aggrieved persons, where a huge chunk of land belonging to a very large persons is involved. In *Sudhir Chandra Agarwala v. State of U.P. and Others* 2008 (3) ADJ 289 (DB) it has been held by a Division Bench of this Court that 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 there 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 a 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 restrains us from doing so. In *Jasraj Singh v. State of U.P. and Others* 2008 (8) ADJ 329 (DB) a Division Bench of this Court has held that dispensation of enquiry u/s 5-A of the Act is a case of subjective satisfaction of the Government and once the Government forms the opinion and dispenses with the enquiry u/s 5-A of the Act, the Court, in its limited jurisdiction of judicial review, cannot declare the acquisition proceedings bad. Pre or post-notification delay or lethargy on the part of the officials of the Government is not fatal to acquisition proceedings. In *Gayatri Nagar Sahkari Avas Samiti Ltd., Aligarh v. State of Uttar Pradesh and Others* 1985 All LJ 1182 a Division Bench of this Court held that whether enquiry should be dispensed with, is primarily and fundamentally a matter of subjective satisfaction of the State Government. Such a decision cannot be questioned in any Court provided that the Government applies its mind and acts in good faith. The Government is the best judge for determining about these matters. It is only in a case of mala fide exercise of power that the Court can interfere. In *Jai Narain and Others Vs. Union of India and Others*, it has been held by the Supreme Court that if the public purpose on the face of it shows that the land is needed urgently, that by itself is a relevant circumstance for justifying the action u/s 17(4) of the Act. The Supreme Court in *Union of India and others Vs. Praveen Gupta and others*, has held that it is now settled legal position that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. Therefore, there was no need to pass any reasoned order to reach the conclusion that there is urgency so as to dispense with the enquiry u/s 5-A in exercise of power u/s 17(4) of the Act. In *Sheikhar Hotels Gulmohar Enclave and Another Vs. State of Uttar Pradesh and Others*, it has been held by the Supreme Court that there is no gainsaying in the fact that this right to file objection u/s 5-A is a valuable right and the Governments are not given a free hand to dispense with. Section 5-A is only a safeguard against the arbitrary exercise of power by the State. But one should also not lose sight of the fact that invocation of such a provision is also sometimes imperative as in order to meet the urgency of the situation it needs to be invoked in public interest. It depends upon case to case.

29. Mr. Navin Sinha, learned Senior Counsel duly assisted by Mr. Ashwani Kumar Misra, Learned Counsel appearing for the Ghaziabad Development Authority, has made the following submissions:

(a) The project concept of development of new townships in all over the State is a public purpose. In particular, it is made not only for District Ghaziabad or of that locality alone but also it is made for eight major cities other than Ghaziabad i.e. Kanpur, Lucknow, Agra, Saharanpur, Allahabad, Varanasi, Bareilly, Gorakhpur, Meerut and Mathura. Growth rate of population of all the places between 1991-2001 was about 48% when it was about 89% in the case of District Ghaziabad. Acquisition is for the purpose of implementing project envisaged and conceived by the Government, which would serve the public purpose objective. It expressly falls u/s 3(f)(ii) of the Act, as per the State Amendment. Section 3(f) of the Act, as per Uttar Pradesh Amendment, is quoted hereunder:

3(f) the expression "public purpose" includes provision for or in connection with-

- (i) sanitary improvements of any kind, including reclamation;
- (ii) the laying out of village sites, townships or the extension, planned development or improvement of existing village sites or townships;
- (iii) the settlement of land for agriculture with the weaker section of the people;
- (iv) the provision of land for a corporation owned or controlled by the State;
- (v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;
- (vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;
- (vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;
- (viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies.

(b) So far as applicability of Part VII of the Act is concerned, Mr. Sinha has adopted the version of learned Additional Advocate General by saying that if the

land is taken for the public purpose and then a scheme is set on the basis of the Governmental policy, the State can make a public private partnership for the development, and if it is done, the public purpose cannot be converted to a purpose of the company. As per the terms and conditions, compensation cost and other charges are being paid by the developer company to the Ghaziabad Development Authority. The Ghaziabad Development Authority from its funds deposits the compensation amount with the Collector for disbursement to the land owners. Money in hands of Ghaziabad Development Authority partakes the nature of public fund. It is not the genesis but the ownership of funds in present which is relevant for consideration that the fund is a public fund. Thus, the requirement of second proviso to Section 6(1) read with Explanation II appended stands fulfilled. Explanation 2 to the second proviso of Section 6(1) of the Act is as follows:

Explanation 2.- Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(c) There were sufficient materials before the State Government to invoke the urgency clause contained u/s 17 of the Act. The subjective satisfaction was arrived at by the Government upon relevant material being placed before it. As against total land-acquired by the notifications under challenge measuring hundreds of acres, the challenge has been made by the persons who are only holder of few acres of land. A majority of land holders, thus, accepted the acquisition. Interest of few individuals must yield the larger public benefit.

(d) The lands acquired under the impugned notifications already stand earmarked in the Master Plan for the purpose of development of Hi-Tech Township. Master Plan was approved after inviting objections from the public at large in accordance with the Act, 1973 as far back as on 14th July, 2005.

30. Mr. Sinha wanted to explain in detail three basic questions, which have been raised herein, as under:

(I) Whether acquisition in question is outcome of colourable exercise of power?

(II) Whether there was any justification for the State Government to invoke Section 17(1) and Section 17(4) of the Act?

(III) Whether the acquisition is not for public purpose but for company under Part VII of the Act?

31. Before adverting to the issues involved, Mr. Sinha wanted to refer the project, policy, its features and background in which it was conceived.

32. He has submitted that the project for developing Hi-Tech townships, as a policy, was conceived by the State Government in the year 2003 to achieve increased availability of developed urban townships so as to make available to the public at large more accommodation, residential and otherwise with all basic

amenities and infrastructure. It intends to serve the interest of the community at large. The objective of securing planned development has been a subject-matter of concern for the Central Government and also the State Government for quite some time. Towards this various policies have been formulated. Initially, the policy was framed for Urban Housing by the State Government in the year 1995. This was followed by a National Housing & Habitat Policy, 1998 and of the year 2005 by the Central Government. The salient features of these two policies of the Central Government have already been quoted above.

33. The State Government at its end in the year 1995 formulated a Housing Policy. Under the said policy, it was provided that the role of the State Government would be that of a facilitator instead of provider. Within the project spectrum and the parameters envisaged by the above housing policies, a policy for development of Hi-Tech townships in the areas adjoining the major cities in the State of U.P. was formulated by the State Government in the year 2003. In this behalf, a Government Order dated 22nd November, 2003 was issued, which provides for: (a) the development of Hi-Tech Townships by associating private capital in the project; (b) modalities and the methodology to be adopted for securing the objective of setting up new urban townships; and (c) specifically, the implementation of the policy by the private developer, but the same shall be constantly monitored and regulated by the State Government through its various agencies including the authorities under various enactments.

34. The State Government and the public authorities noticed that the agricultural areas in the proximity of the developed urban limits have a tendency to be utilized for urban purposes, if not regulated, in a haphazard and in a unplanned manner. By declaring and reserving the land use of such areas in the-Master Plan for the development of new Hi-Tech townships, the possibility of such unplanned growth taking place in such areas also gets eliminated. The present policy decision of the year 2003 has the approval of the State Cabinet and it inter alia provides that:

(a) for development of a township, offers will be invited from the private developers through advertisement in the media. Selection will be done by the High Power Selection Committee, presided over by the Chief Secretary of the State, in accordance with the eligibility criteria, which was also prescribed in the policy documents;

(b) for development of a township, land shall be acquired by the Development Authorities, Avas Vikas Parishad and other nominated authorities as per the provisions of Land Acquisition Act;

(c) acquisition cost shall have to be borne by the developer company but it shall be given a rebate of 10% in the compensation cost, which may be determined by the Collector;

(d) the land shall be given to the developer company on lease for a period of 90 years;

(e) land shall be developed by the developer company strictly in accordance with the bye-laws, master plan and zonal plan keeping in mind the environmental perspectives;

(f) the entire infrastructure in the township will have to be developed by the developer company;

(g) the developer company shall make available land to the State Government for the establishment of community services such as Police Station, Fire Station, Post Offices, Telephone Exchanges, etc. for which the developer company shall not be entitled to any payment;

(h) the developer company shall carry out project strictly as per the plan and the control of the development work shall be within the supervision of local authorities or such authority, as may be nominated by the State Government;

(i) the State Government shall retain 25% of the transferred land under its control, so that in case the developer company commits any default in carrying out the work, the same may be got done by the State Government.

35. In terms of the said policy of 22nd November, 2003, advertisements were published in the newspapers on 16th July, 2004 for development of Hi-Tech townships in nine districts of Uttar Pradesh i.e. Kanpur, Lucknow, Agra, Saharanpur, Allahabad, Varanasi, Bareilly, Gorakhpur, Meerut, Ghaziabad and Mathura. The last date for submitting offer was 16th August, 2004 but the same was extended from time to time and lastly till 15th October, 2004. In response to the advertisement, 34 offers were received for the development of 16 Hi-Tech Townships. These offers were examined by the High Power Committee, presided over by the Chief Secretary, and by the Government Order dated 21st May, 2005 six developers were selected for 9 projects i.e. Ghaziabad, Agra and Lucknow each having two projects and Kanpur, Varanasi and Mathura having one project each. It may not be out of place to mention here that in so far as such selection process is concerned, it has not been a matter of challenge before any forum.

36. After the selection process was completed on 21st May, 2005, the State Government on 25th November, 2005 issued another Government Order containing the terms, on which memorandum of understanding was required to be executed between the development authorities and the selected developer company. In between on 14th July 2005, after following the procedure as prescribed in the Act, 1973 which Includes the objections being invited from the public at large, the Master Plan indicating the land reserved for the developments Hi-Tech township was approved.

37. On 30th November, 2005 a memorandum of understanding was signed between the developers and the Ghaziabad Development Authority. Memorandum of understanding besides containing the terms of the policy further specified that the developer company shall be under an obligation to follow land use planning norms, developer was to ensure the density ratio of 150-200

persons per hectare and that 35-40 percent of the developed area shall be for residential purposes. The developed areas for the commercial and industrial purposes are only 4-6% and 4-6%. Memorandum of understanding further contemplates that 10% of total houses/plots shall be reserved and sold to economically weaker section and 10% to the lower income group as per the norms and the cost to be prescribed by the State Government. The memorandum of understanding further gives liberty to the State Government to amend, add, alter or modify its terms. The said policy underwent a change in the year 2006 i.e. on 28th April, 2006 and thus, it was modified on 18th May, 2006. The said Government Order dated 18th May, 2006 prescribed that looking to the extremely urgent requirement of housing accommodation in the State, it would not be appropriate to confine the optimum area of the township to approx 1500 acres and it was considered that subject to the eligibility criteria being fulfilled, the selected developers may apply for the expansion of the area for the development of the township but for the area above 1500 acres no remission in the stamp duty shall be available to the developer company. It further casts an obligation upon the developer company to provide service free of cost to those rural abadis, which have been included in the area earmarked for the development of new townships.

38. Thus, in view of the changed scenario the memorandum of understanding so executed on 30th November, 2005 was also amended, which in noway relaxed the rigors of control as contained in the original memorandum. The salient features of the Hi-Tech Township projects, which emerge from the terms of memorandum of understanding executed between the concerned development authorities and the private developer, have already been quoted above.

39. So far as the above three points are concerned, Mr. Sinha submitted as under:

(I) Colourable exercise of power:

40. Indisputably, true purpose of acquisition was the development of a new urban township. This was a project conceived by the State Government. It was also envisaged that implementation of the said project can be done only by involving the private investments. At the time when the policy was laid down, no individual specific developer was in picture. Furthermore, the policy for development of Hi-Tech Township is contained in the Government Order dated 22nd November, 2003, whereas, for the first time, advertisement was made inviting offers from the interested developers only on 16th July, 2004 and thereafter the selection was made only in the year 2005, as contained in the Government Order dated 21st May, 2005, therefore, there is no material before the Court to establish that it was selected developer, which approached the State Government with its project and that the acquisition was only a subterfuge to accommodate the said developer.

41. The dominant purpose, for which the power of eminent domain was

exercised, was establishment of Hi-Tech township under a policy decision, which had approval of the State Cabinet not only at the initial stage but at all stages. Question of purpose of acquisition being unauthorized or illegal does not arise, inasmuch as the policy decision was taken by the State Government much before any selection of developer entered upon the scene. Acquisition of the land for development of urban township was a public purpose and that will be exercised by the State Government.

42. In such circumstances, Mr. Sinha has pointed out before us that:

- (a) there is no allegation or material in the writ petitions that the policy itself from inception was garnered to accommodate the private developer;
- (b) there is neither any allegation nor material to establish that the private developer was the one which initiated the concept of urban township; and
- (c) the selected developer company came into picture only after the project had been conceived and envisaged.

43. In support of his contentions, Mr. Sinha has relied upon the judgment of the Supreme Court in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, to establish that Section 4(1) of the Act confers power on the Government and the Collector to acquire land needed for a public purpose. The power to acquire land is to be exercised for carrying out a public purpose. Therefore, if one can not tolerate the existence of such public purpose as because it does not match with his own purpose, it cannot be said to be not a public purpose. When the power exercised is in good faith for legitimate reasons, it cannot be said to be a colourable exercise of power. Only the case of established proof of extraneous or irrelevant considerations or reasons gives rise to the question of colourable exercise of power. In Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, a three Judges' Bench of the Supreme Court has held that the concept of bad faith eludes precise definition, but in relation to the exercise of statutory powers it may be said to comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred. The power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. There is a distinction between exercise of power in good faith and misuse in bad faith. The misuse in bad faith arises when the power is exercised for an improper motive, so to say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister. Use of a power for an "alien" purpose other than the one for which the power is conferred, is mala fide use of that power. In State of Punjab and Another Vs. Gurdial Singh and Others, it was held by the Supreme Court that if the use of the power is for the fulfilment of a legitimate object, the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but

irrelevant to the entrustment. In *Girias Investment Pvt. Ltd. and Another Vs. State of Karnataka and Others*, the Supreme Court has held that it is no doubt open to the Court to go into the question of mala fides raised by a litigant but in order to succeed, much more than a mere allegation is required.

(II) Acquisition is for a public purpose:

44. Broadly speaking, public purpose would mean a purpose which is beneficiary to the community at large as opposite to the interest of the individual. The project for development of urban township is a project designed with the object of serving general interest of the community at large.

45. Tenth report of the Law Commission of India has considered the issue whether the phrase "public purpose" as defined in the Act was liable to be revisited. Proposals for an amendment to the phrase "public purpose" were turned down by holding that a precise and exhaustive definition would leave no room for alteration in the light of changing times and circumstances. The Commission was ultimately of the view that it should be left with "sufficient elasticity" to enable the Courts to interpret the phrase according to the need of the situation.

46. Bearing the above in mind, it would be correct to assert that the singular test to be applied would be to find out whether the project and aim of the acquisition is to bring into existence something aimed at the general interest of the community as opposed to the particular interest of individuals. If the purpose of the acquisition is to benefit the community as a whole and not some individual, it would clearly be an acquisition for a public purpose.

47. In the present cases, the acquisition notifications clearly state that the land was being acquired for the purposes of development of urban township. Thus, the development will undoubtedly serve the interest of not any one individual member but the interest of the community at large. Each of such townships would accommodate 1-1.5 lac people with all infrastructure and amenities.

48. In *Babu Barkya Thakur Vs. The State of Bombay and Others*, it has been held by a Constitution Bench of the Supreme Court that the expression "public purpose" has been used in its generic sense of including any purpose, in which even a fraction of the community may be interested or by which it may be benefited. In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, again a Constitution Bench of the Supreme Court has held that broadly speaking the expression "public purpose" would, however, include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. Public purpose is bound to vary with the times and the prevailing conditions in a given locality and, therefore, it would not be a practical proposition even to attempt a comprehensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose. If it appears that what the Government is satisfied about is not a public

purpose but a private purpose or no purpose at all, the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. In *Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others*, it has been held by the Supreme Court that the expression "public purpose" as defined in Section 3(f) of the Act is merely illustrative and not exhaustive. The inclusive definition of Section 3(f) of the Act does not restrict its ambit and scope. The expression "public purpose" is incapable of precise and comprehensive definition. And it is neither desirable nor advisable to attempt to define it. It is used in a generic sense of including any purpose wherein even a fraction of the community may be interested or by which it may be benefited. The concept is not static but changes with the passage of time. Public purpose is bound to vary with the times and the prevailing conditions in a given locality and, therefore, it would not be practical proposition even to attempt a comprehensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose. By the power of eminent domain the Government can exercise power to acquire the land for a public purpose. Such public purpose implies that acquisition or requisition of property directly and vitally subserves public interest. The expression "public purpose" includes a public purpose in which greatest interest of the community as opposed to a particular interest of an individual is directly concerned. The expression "public purpose" is of very wide amplitude. A "public purpose" is wider than a "public necessity". Purpose is more pervasive than urgency. That which one sets before him to accomplish, an end, intention, aim, object, plan or project, is purpose. A need or necessity, on the other hand, is urgent, unavoidable, compulsive. "Public purpose should be liberally construed, not whittled down by logomachy." The mere fact that the immediate use is to benefit a particular individual would not prevent the purpose being a public one, if in the result it is conducive to the welfare of the community. Public purpose is not a constant. The scope of an expression which conjugates general interest of the public must necessarily depend inter alia on social and economic needs and broad interpretation of the democratic ideal. The application of the rule must rest on the modern economic system of a welfare State having its own requirements and problems. The application of the rule would not be governed by right distinctions nor would the economic principle be allowed to be blurred by the blending of forms and interests.

(III) Acquisition is not covered by Part VII of the Act:

49. Mr. Sinha has submitted that it is being argued on behalf of the petitioners that involvement of private entity taints the acquisition as it implies that the acquisition has been covered under Part VII of the Act. The said contention will have to be examined keeping in mind the fact that the project was conceived as a matter of policy much before any specific developer came on the scene. After the State Government conceived the project, it had inter alia taken a policy decision to implement the project in partnership with private sector. It provided

both about the mode and manner in which the project was to be implemented. The land is being acquired only for the purposes of implementing the project so conceived by the State Government with the approval of the State Cabinet. It was much after the policy, so declared, that the selection process was set into motion and against 35 applicants, 6 developers were selected for carrying out the project of urban townships at 9 different places in the State.

50. The fact that there was absolute transparency in the process of selection is apparent as the selection process has not been under challenge at any stage. The necessity for involvement of private sector was because neither the State Government nor the Development Authorities had means or finances to undertake the investment required in the establishment of urban townships. It is, thus, clear that mere involvement of the private sector as a matter of policy does not denude the project of its main objective and aim of serving general interest of the community.

51. Going to the issue of Part-II and Part-VII of the Act, it is worthwhile to note here that there are only two factors, which distinguish acquisitions under the Parts aforementioned. In an acquisition made under Part-II of the Act it is to be seen; firstly, the acquisition proposal should be for implementation of a project for a "public purpose" and second is the payment of compensation, which entails payment of acquisition cost from/out of public revenue. Reference has been made to the 2nd Proviso read with Explanation II of Section 6 of the Act.

52. In the case of an acquisition for a company, the purpose is acquisition for the project or work of the company as opposed to a public purpose and secondly, no part of compensation is paid out of public funds as per the second proviso to Section 6 of the Act.

53. Coming to the 2nd test, undisputedly in the present cases the entire acquisition charges including amount of compensation has been paid by the private developer company. As per the memorandum of understanding and the terms of the policy of urban township laid down by the State Government, the entire acquisition charges including compensation has been paid by the company to the development authority and the development authority has deposited the compensation with the Collector for payment to the affected land owners. To clarify, ultimately, the amount of compensation deposited with the Collector is paid and comes from the funds of Ghaziabad Development Authority. The funds, which stood credited in the account of the development authority, formed part of public revenue and/or in any view of the matter funds of a corporation owned and controlled by the State Government. Thus, requirement of second proviso to Section 6 read with Explanation II stands satisfied.

54. In Sooraram Pratap Reddy (supra) it has been held on the basis of the judgment in Arnold Rodricks and Another Vs. State of Maharashtra and Others, that there is no reason why the State or local authority should have no power to get further development done through private agencies by lease, assignment or

sale of acquired land. On the question of "planned development" the Court considered the Development Act of the concerned State and held that in absence of the plan the proceedings cannot be vitiated. Acquisition generally precedes development. If for proper development, land is sought to be acquired, such action could not be said to be illegal, unlawful or in colourable exercise of power. For allotment of land to any company or cooperative society Part VII of the Act cannot be attracted and the acquisition cannot be held invalid. Relying upon a Division Bench judgment of this Court in *Balbir Singh and Another v. State of U.P. and Others* 2009 (10) ADJ 441 (DB) Mr. Sinha wanted to establish that when the project was opened to all and the acquisition was not made for the company's own benefit and the compensation is seen to be paid out of public revenue, then it will not come under Part VII of the Act and the applicability of Part VII of the Act cannot be held to be maintainable. Such Division Bench judgment was confirmed by the Supreme Court in *Nand Kishore Gupta and Others Vs. State of U.P. and Others*,

55. In view of the above, following facts stand established:

(A) Project was conceived by the State Government and not by the Company.

(B) It was policy decision of the State Government that the new urban townships be created in order to meet the growth of urbanization in major cities of Uttar Pradesh and the policy decision was also taken with the approval of the State Cabinet to develop the same by the State Government by roping in private investment in that sector.

(C) In the Master Plan, the land use for development of new urban townships was earmarked by the State Government after following the procedure contained in the Act, 1973, which includes notices to be given and objection to be invited from the members of the public at large.

56. Therefore, from the above discussions, the following issues stand settled;

(i) Acquisition is not for a project of or conceived by the company.

(ii) Acquisition is not presided by any application of the company for acquisition of a land for a project conceived by it or for its own works.

(iii) Acquisition is for the development of urban township in the mode and the manner laid down in the project document and memorandum of understanding entered into with the development authorities.

(iv) This is a public purpose.

(v) The land for the project is being provided by the State Government for implementation of a project conceived by the Government.

(vi) The land is being provided to the developer company on lease of 90 years and is to be reverted back to the acquiring body upon expiry of the term of the lease.

(vii) The payment of 90% of acquisition cost to be borne by private developer once received by the Ghaziabad Development Authority becomes its fund as it partakes the character of public revenue.

(viii) Since the payments have been made from or out of public revenue, provisions of Part-VII are not attracted.

(ix) 10% of land acquisition cost, in any view of the matter, is being incurred by the State only.

57. Mr. Sinha submitted that in view of the above, the acquisition is not for the " company but for the considered public purpose.

58. A detailed discussion with regard to payment of acquisition cost is required to be made hereunder. It may be noted that at all those relevant points of time when the policy was framed or offers were invited from intending developers or when they were selected, no land had been acquired by the Government but only sites for development of township have been broadly chosen. All that was on record, was the obligation of the State Government to provide land for the project. Acquisition cost incurred, in terms of the project policy and the memorandum of understanding, is to be borne by the developer company. More importantly, it is to be noted that payment is being made by the company to Ghaziabad Development Authority. It is Ghaziabad Development Authority, which in turn deposits the money with the Collector for disbursement to land owners. It is submission of Ghaziabad Development Authority that the compensation once paid to Ghaziabad Development Authority becomes its fund. How it utilizes the said fund, is for it to chose and decide. The moment compensation amount comes to the Ghaziabad Development Authority and stands credited to its account, it partakes the character of public revenue and it is from this public revenue that the estimated compensation is paid. Since the compensation is being paid from the public revenue, it is established that the acquisition is not for the company nor is it traceable to the provisions of Part-VII of the Act. The decision of this Court in Balbir Singh (supra) follows this reasoning based upon the decision of the Supreme Court in Pratibha Nema and Others Vs. State of M.P. and Others, wherein it was held that even if it was within the contemplation of the parties that the acquisition cost shall be borne by the company, the moment it went to the account of the acquiring body, it becomes public revenue. It was further held that the genesis of the fund which is not relevant and what was determinative was its ownership in presentii. Similar view was also taken in Naihati Municipality and others Vs. Chinmoyee Mukherjee and others, wherein in paragraph-2 it was observed as follows:

.....In view of the fact that at the relevant point of time the municipality did not have necessary funds to meet the cost of acquisition, they had requested hawkers" union to contribute the money for the acquisition. Consequentially, Rs. 3,90,000 came to be handed over to the Municipal Commissioner who had deposited the same into the funds of the municipality. Thereby, the amount had

formed and fused into an integral part of the municipal funds.....The meat of the matter is that after the deposit by the hawkers, they have no right to withdraw the said amount which formed part of the funds of the municipality. The High Court, therefore, was not right in holding that the amount has not become part of the funds managed or controlled by the local authority within the meaning of the second proviso to sub-section (1) of Section 6.

59. In respect of the question whether the State Government was justified in invoking Section 17 of the Act, Mr. Sinha has submitted that the urgent need for new townships is clearly spelt out from the project document itself. The rate at which the urbanization is taking place is evident from the fact that as per the census during the period between 1991-2001 the rate of growth in the six major cities of the State has been more than 48%. As per census of 2001, in decade of 1991-2001 the population growth in Ghaziabad has been to a rate of 89.25%. This has lead to a virtual collapse of the entire infrastructure in the existing townships.

60. Mr. Sinha submitted that large number of land holders are likely to be affected by the acquisition notifications. If each individual land owner is to be given a hearing or right to object, it would defeat the very object of the project. The area which is covered by the notifications under challenge before this Court aggregates to more than few hundred acres. Looking to the largeness of the area, the power to invoke Section 17 of the Act was clearly justified, as relevant for dispensing with the enquiry u/s 5-A of the Act. Even otherwise, once under the master plan the land use of land under acquisition has been marked for acquisition for Hi-Tech Township, it cannot be used for any other purposes. Thus, even otherwise no prejudice can be said to have been caused to them.

61. He further submitted that the State in its record and affidavits has asserted the grounds of nature of project and possibility of encroachment. The issue of dispensation of enquiry u/s 5-A of the Act is a matter of subjective satisfaction of the State Government. The limited grounds of challenge in all these situations are either mala fides or lack of material before the State Government. The Courts would not interfere with the subjective satisfaction arrived at by the State as long as there was some material before it having nexus with the opinion required to be formed. It is submitted that the State Government had the requisite material before it to enable it to form an opinion whether the enquiry should be dispensed with or not. The sufficiency or insufficiency of the material is not the scope of enquiry in all these matters.

62. Reliance, as has been placed by the petitioners, on the judgment of the Supreme Court in *Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another*, is misconceived. There acquisition under consideration was for an area of 490 acres. In the present cases, project is for an area of more than thousand of acres. Thus, there can be no comparison between the two. In a large area, where project is being implemented, there is always a strong possibility of encroachments and third party rights being created even before

State can take possession. Moreover, the observations made in Om Prakash (supra) has itself been explained by the Supreme Court in subsequent decision/s. Further, Om Prakash (supra) in paragraph 15 itself holds that in case the State had recorded that considering the large number of landholders involved the holding of an enquiry would have unduly" delayed the project, as a ground which would have been sufficient to dispense with the enquiry u/s 5-A of the Act.

63. In order to understand the ratio of various judgments relied upon by the petitioners from the case of Mukesh Hans (supra) to Anand Singh (supra), it is firstly necessary to understand the factual background in which the judgments came to be rendered. In the case of Mukesh Hans (supra) the Court in paragraphs 9 and 37 of the judgment found that an earlier exercise for acquisition of land was allowed to lapse and it was after a long gap of time that fresh proceedings were sought to be initiated by invoking the urgency clause. The Court further significantly found that the record of the Government did not disclose any material on the basis of which such an opinion may have been formed. The other judgment which is often relied upon is that of Krishan Lal Arneja (supra). In the said judgment also the facts reveal that the properties in question had been requisitioned way back in 1950 and since then was continuously in the occupation of Government officiate. However, acquisition proceedings were initiated only in 1987 and that too when the Requisition Act was about to lapse.

64. In so far as the judgment of the Supreme Court in Babu Ram and Another Vs. State of Haryana and Another, is concerned, here again the Court noticed that an acquisition exercise was sought to be undertaken in 1995-96 with no further steps being taken and the acquisition exercise was revived only in 2005. Moreover, this was an acquisition of land for setting up a sewage treatment plant which was liable and could possibly be shifted covering only a few plots. This in contradiction to our project covering an area of 25 million square meters of land as well as an express way covering a distance of approximately 165 kilometers.

65. However, it would be apposite to refer to the latest judgment of the Supreme Court in Tika Ram and Others Vs. State of U.P. and Others etc. etc., In the said judgment in paragraphs 108,114,115 and 117 the Supreme Court has clearly found that the urgency under Sections 17(1) and 17(4) of the Act need not be equated with the urgency contemplated u/s 17(2) of the Act; planned development is a matter of great urgency and that in the absence of allegations of mala fides sufficient material being available before the State Government, judicial review must end there.

66. After conclusion of hearing when the judgment was reserved, we have come across a judgment of the Supreme Court being dated 15th April, 2011 delivered in Civil Appeal No. 3261 of 2011, Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, From such judgment we find that the order of a Division Bench of the High Court being dated 15th December, 2008 in Radhey Shyam Sh. and Others v. State of U.P. and Others 2009 (2) ADJ 386

(DB) has been set aside and the respondents have been directed 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. Since the matter relates to similar type of action i.e. waiving of Section 5-A of the Act and invocation of Section 17(1)(4) of the Act, we have given an opportunity to the parties to make their respective submissions in this respect by placing the matters in the list under the heading "to be mentioned" even after conclusion of hearing. The parties have made their respective submissions on 11th May, 2011 and 13th May, 2011.

67. Since, such judgment and order of the Supreme Court i.e. Sri Radhy Shyam (supra) goes against the action of the State in connection with the land acquisition, we have called upon Mr. J.N. Mathur, learned Additional Advocate General, to address the Court at first as to why the ratio of such judgment will not be applicable in the present cases, and if so, what are the distinguishing features available in such judgment. In turn, Mr. Mathur has submitted that basically the judgment of the Supreme Court was passed on three contingencies as under:

(a) Dismissal of the writ petition by the High Court only on the technical ground and without any exchange of affidavit is unwarranted.

(b) Abadi (residential) property of the appellants therein was acquired without affording any opportunity of hearing, which is unsustainable in nature.

(c) While acquisition was made in respect of abadi land of the appellants, huge chunks of land of some influential persons inclusive of Members of Legislative Assembly were eliminated, therefore, the action was highly discriminatory, arbitrary, mala fide in nature and violative of Article 14 of the Constitution of India.

68. Mr. Mathur has submitted that none of the contingencies are available in the present cases. On the other hand, in the instant cases, 75% land was purchased by the private persons, who want to make the public private partnership for planned development, from the sellers directly and they had shown their eagerness to complete the development. Against this background, only remaining 25% land the State wanted to acquire, out of which leaving aside very few others have already agreed to sell their property, under the scheme of Rules, 1997. Secondly, no abadi land discriminating the others has been taken nor the writ petitions have been heard by this Bench without exchange of affidavits before reserving the judgment. In the counter-affidavit of the State, reasons for invoking provisions of Sections 17(1) and (4) of the Act have been categorically mentioned as follows:

50. That, the contents of paragraph No. 9 of the writ petition are not admitted as stated, and as such denied. As detailed in the preceding paragraphs of the counter-affidavit, development of the township for providing housing facilities, is

a pressing urgency, which has been repeatedly emphasized in terms of National Housing Policy and also in view of the fast growing population of Ghaziabad, and considering the same it was deemed in public interest that the urgency clause under Sections 17(1) and 17(4) be invoked and the provisions of enquiry u/s 5-A be dispensed with. Accordingly, the respondent No. 2 authority submitted its report for invoking provisions of Section 17(4), wherein apart from laying emphasis on the public interest, it was stated that any delay in execution of the scheme might result in illegal and unauthorized constructions coming up, which would create difficulty in taking possession of the land in question and would frustrate the development purposes aforementioned. Upon considering the report submitted by the Respondent No. 2 authority, the Collector, Ghaziabad upon duly examining the proposal for initiating the land acquisition proceedings, submitted his report recording his satisfaction with regard to the urgency and also stating that immediate possession of the land was required to be taken. The complete proposal was duly considered by the State Government and upon considering the entire records, the State Government recorded its consent and its satisfaction with regard to the urgency of the project for development of the proposed Hi-Tech Township providing housing facilities of high quality, and accordingly it was held that the urgency clause 17 u/s be invoked and the provisions of Section 5-A be dispensed with. True copies of the report submitted by the respondent No. 2 Authority and the Collector, Ghaziabad in respect of invoking the urgency clause, is being annexed herewith and marked as ANNEXURE NO. CA-13 to this affidavit.

69. That apart, one aspect has not been pointed out before the Supreme Court that planned development is also part and parcel of the special powers of the State in case of urgency by virtue of U.P. Amendment being sub-section 1-A of Section 17 of the Act, inserted by U.P. Act No. 22 of 1954, which is as follows:

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

70. Therefore, having those distinguishing features the ratio of such judgment of the Supreme Court i.e. Sri Radhy Shyam (supra) is inapplicable in the present cases.

71. When we have called upon the writ petitioners to give reply to such submissions of Mr. Mathur, Mr. A.B. Saran, learned Senior Counsel appearing for the petitioners in one of the writ petitions, has contended before this Court that the acquired land is more than 25%. According to us, we have specially fixed these matters under the heading "to be mentioned to get appropriate answer/s to the query of the Court not with regard to discussion of all the issues, which have already been done by the parties prior to reserving the judgment. Therefore, such submission is mere repetition of the earlier submission/s unconnected with the query. However, Mr. Mathur has reiterated his contentions that the total area acquired for the Hi-Tech township in question is 355.6539

acres, which is less than 25% of the original project area of 1500 acres. The area of project, as per revised plan stands at 4494 acres and, therefore, the area acquired is even less than 10% of the project area.

72. So far as other petitioners are concerned, Mr. S.S. Shukla, Learned Counsel appearing for the petitioners in some of the writ petitions, has only made a submission that when a special power is given by the Central Government u/s 17(1) of the Act to the State to take appropriate action for public purpose then the applicability of U.P. Amendment under sub-Section 1-A thereof is redundant. To such submission, we are of the view that Section 17(1) of the Act gives a general power to the appropriate Government to take possession of any land needed for the public purpose when sub-section 1-A inserted by U.P. Amendment specifies some of the specific public purposes inclusive of "planned development". Therefore, the submission as made by such petitioners that sub-section 1-A of Section 17 is redundant in view of applicability of Section 17(1) of the Act, is unsustainable in nature.

73. Let us confine ourselves to the existing Land Acquisition Act, 1894. The law is old one and based on the principle of eminent domain. The inherent power of a Governmental entity to take privately owned property, specially land and convert it to public use, subject to reasonable compensation for the taking, is the basic principle of eminent domain. In other words, a private property cannot be taken for public use without just compensation. Question of just compensation was built upon the concept of a moral obligation to pay for Governmental interference with private property. Therefore, if it is proved beyond doubt that the land was not needed for public use or just compensation is not paid, then one can hit the applicability of eminent domain. The words "public use" are synonymous to the words "public purpose" and opposite to the words "private purpose". Public necessity is superior to private following the maxim *necessitas publica major est quam privata*. A "public purpose" is wider than "public necessity". The concept is not static and dependable upon terms and conditions of the locality.

74. Against this background, let us see whether the land was acquired for the public purpose or not/Section 3(f) of the Act with U.P. Amendment of 1954 defines the expression "public purpose", as has been quoted above. If we read such section with U.P. Amendment alongwith Section 17 (1-A) being U.P. Amendment thereto, it will be picturised that "planned development" is an urgent need for public purpose. It is nobody's case that the land had not been taken for "planned development". The case of the petitioners is that the planned development is not for public purpose but for a company, therefore, proposal of such development is camouflage, hence, it is colourable exercise of power. Moreover, there was no occasion not to issue notice u/s 5-A of the Act. Section 5-A is insertion of Act 38 of 1923 substituted by the Act 68 of 1984. Therefore, it is a rider to the principle of eminent domain unless, of course, Section 17(1) and (4) are needed to be applied. Section 5-A is not only applicable on account of public purpose under Part II of the Act but also for company under Part VII of the

Act. Objections are needed to be made within twenty one days from the date of publication of notification as per U.P. Amendment The only difference is when in the case of a "company" it is mandatory, but in the case of "public purpose" it is optional from the point of view of Section 3(f) read with Section 17 of the Act.

75. Moreover, when this city falls within NCR, no planned development can be made by the State as per their whims but with the approval of sub-regional plan/master plan in conformity with the regional plan of NCR. We find from the record that the plan is approved by the respective NCR Cell, which specifies area of planned development of Hi-Tech township. Copy of such plan be kept with the record. The object of the NCR is controlled by the National Capital Region Planning Board Act, 1985 (hereinafter in short called as the "Act, 1985") introduced on 09th February, 1985. The object of such Act is as follows:

An Act to provide for the constitution of a Planning Board for the preparation of a plan for the development of the National Capital Region and for co-ordinating and monitoring the implementation of such plan and for evolving harmonized policies for the control of land-uses and development of infrastructure in the National Capital Region so as to avoid any haphazard development of that region and for matters connected therewith or incidental thereto.

76. Sections 18, 19 and 20 of the Act, 1985 being relevant for the purpose are also quoted hereunder:

18. Preparation of Project Plans.-A participating State, or the Union Territory, may, by itself or in collaboration with one or more of the participating States or the Union Territory, as the case may be, prepare Project Plans for one or more elements of the Regional Plan, Functional Plan or Sub-Regional Plan.

19. Submission of Sub-Regional Plans to the Board.-(1) Before publishing any Sub-Regional Plan, each participating State or, as the case may be, the Union Territory, shall, refer such plan to the Board to enable the Board to ensure that such plan is in conformity with the Regional Plan.

(2) The Board shall after examining a Sub-Regional Plan, communicate, within sixty days from the date of receipt of such Plan, its observations with regard to the Sub-Regional Plan to the participating State or the Union Territory by which such Plan was referred to it.

(3) The participating State, or, as the case may be, the Union Territory, shall after due consideration of the observations made by the Board, finalise the Sub-Regional Plan after ensuring that it is in conformity with the Regional Plan.

20. Implementation of Sub-Regional Plans, etc.-Each participating State, or, as the case may be, the Union Territory shall be responsible for the implementation of the Sub-Regional Plan as finalised by it under sub-section (3) of Section 19 and Project Plan prepared by it.

77. Therefore, we conclude by saying that the public purpose is not vitiated by

the action of the State.

78. So far as colourable exercise of power is concerned, we find that the Government has floated a scheme to make development of the aforesaid cities on the basis of public private partnership due to lack of fund. Therefore, the aforesaid scheme following the policy was made available to all the cities as aforesaid but not for a particular place. Similarly, by advertisements in widely circulated newspapers, of the country various private entrepreneurs were called upon to place their respective proposals to examine their strength to become the private partner of such partnership in doing the needful and not a particular proprietorship/ firm/ company. Selection of partner was never questioned by anybody at any point of time. The State did not agree to provide 100% land to such private partner but directed to purchase 75% land directly from the land owners and remaining 25% land little more or less, has been acquired by the State. The project is of the State and not of any private partner. Terms and conditions of the public private partnership speak that the private partner is under obligation to follow the land use planning norms. Thus, the exercise of the State cannot be said to be a colourable exercise of power.

79. Now let us confine our discussion with regard to dispensation of Section 5-A of the Act. In the case of Mukesh Hans (supra) a three Judges' Bench of the Supreme Court amongst others felt that the authorities did not inform about the lapsation of the period for acquisition by efflux of time being a relevant factor to dispense with Section 5-A enquiry. In Krishan Lal Arneja (supra) it was held by the Supreme Court that the stand of the Union of India and others that they did not want to remain in unauthorised possession of the properties under the temporary Act, being Requisitioning and Acquisition of Immovable Property Act, 1952 extended upto 1985, would not justify invocation of urgency clause u/s 17(1) and (4) of the Act. At the time of passing the judgment, the Supreme Court categorically held that if the appellants (Union of India and others) were really serious in acquiring the properties in question, they had almost two years' time even after taking the decision to acquire them or derequisition them within which time, acquisition proceedings would be completed in the usual course without depriving the respondents of their valuable right to file objections for acquisition and without dispensing the enquiry u/s 5-A of the Act. In Essco Fabs Private Limited (supra) the Supreme Court negatived the order of dispensation on the ground that after about twenty years of the first notification of 1982 u/s 4(1) and after about eighteen years of notification of 1984 u/s 6 and nine years after rejection of prayer for change of user, urgency clauses under Sections 17(1) and (2) were applied.

80. In the instant cases, a Cabinet decision was taken to acquire the land in 2003 and that notification calling for objections regarding change of land use was made in 2005, which was ultimately implemented since no objection arose. Therefore, after change of land use on the specific terms of planned development, hardly there is any scope to put an objection on account of public

purpose and suitability of acquisition in respect of the land being determinable questions u/s 5-A of the Act apart from compensation. Whether the petitioners have valuable or substantive or fundamental right, is not the sole question before us but right to raise an objection after a period of five years from the change of land use with notification calling for objections under the Act, 1973. After the change of user no body can claim his agricultural right or any other right in respect of the land in question available prior to introduction of change of user under the Act, 1973. Moreover, the planned development programme is not restricted only to the plot of the petitioners but huge tract of land about thousand and few hundreds acres is involved herein. The disputes as raised by the petitioners herein are at best for few acres out of it. Substantial amount of compensation i.e. Rs. 36,83,97,968/- , which has now gone upto Rs. 89,01,20,000/- , has been paid to the various land owners. In such circumstances, the Supreme Court in Anand Singh (supra) though has held that in the normal circumstances, Section 5-A of the Act will not be applied but when factually discovered that substantial amount of compensation has been paid and more than 60% of the work has been completed, no relief was granted in favour of the petitioners and only held that if the petitioners want to get release of the land, representation can be made u/s 48(1) of the Act. In Nand Kishore Gupta (supra) the Supreme Court held that when there is a huge project, which has hopelessly delayed and the cost had gone up several crores and hearing of the individual farmers if permitted, will continue several years and the cost will be further soared up and possibility of encroachment may happen if it is allowed to linger. Therefore, there is a justification of dispensation of enquiry u/s 5-A.

81. In the open Court, we have examined the desire of the petitioners. It appears that there is a splited view. We found that many petitioners are interested to get better compensation when very few are interested to have their land As the query was made by the Court and submission was made without prejudice to their right hereunder, we do not want to disclose the names of the petitioners in this judgment but specified their intentions.

82. So far as applicability of Sections 17(1) and 17(4) of the Act i.e. urgency clause is concerned, the same is a million dollar question before us particularly in view of two recent judgments of the Supreme Court Le. Sri Radhy Shyam (supra) and Greater Noida Industrial Development Authority Devendra Kumar and others, 2011 (6) ADJ 480 (SC) , which we have come across after reserving the pronouncement of judgment As a result whereof, we have given further opportunity of hearing to the parties on the judgment/s and wanted to examine the records further. Upon going through Sri Radhy Shyam (supra) we find that abadi land of a landowner was acquired leaving aside land of the powerful and politically influenced person/s. But when the writ petition was filed, a Division Bench of this Court without giving direction to the respondent to file affidavit/s to examine the stand of the State, dismissed the writ petition. In the present cases, the acquired land is not "abadi" eliminating the powerful persons inclusive of politicians unlike Sri Radhy Shyam (supra) nor there is any scope to dismiss the

writ petitions without exchange of affidavits as held in *Sri Radhy Shyam (supra)*. In this matter/s affidavits are exchanged and the records have been produced before this Court for examination. In *Devendra Kumar and others (supra)* land use was initially made for industrial purpose but before issuance of notification of Section 6 of the Act land use was changed and made for residential purpose. Here, no land use has been changed at any time. Therefore, both the cases are factually distinguishable. That apart, in *Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others*, it was held by a parallel Bench of the Supreme Court that so far as the change of user is concerned, it is a settled legal proposition that once the land vests in the State free from all encumbrances, there cannot be any rider on the power of the State Government to change user of the land in the manner it chooses. In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the landowner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes *persona non grata* once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever. We do not find any discussion of the judgment of *Sulochana Chandrakant Galande (supra)* in *Devendra Kumar and others (supra)*.

83. Generally, the Court does not want to interfere with the eminent domain of the State because State is the final authority about need of acquisition. But amendment of the Land Acquisition Act, 1894 by inserting Section 5-A has given a new dimension to the Act. It gives right to the land owners/ occupants to put their objections. Section 5-A of the Act gives right of *audi alteram partem* to the persons, whose lands are going to be acquired. Hence, dispensation of Section 5-A of the Act can be used sparingly but not in a routine manner. Such objection can be made against requisition, acquisition and/or adequacy of compensation. As of now, just compensation cannot be treated to be rule of thumb to pay throw away price to the land owners at the time of taking their bread and butter and that too sometimes making several deductions in the name of development, not sanctioned by law but by several pronouncements. A Division Bench of this Court presided over by one of us (Amitava Lala, J.) has discouraged the same in the judgment in *Jagdish Chandra and Others v. New Okhla Industrial Development Authority NOIDA and Another* 2008 (1) ADJ 253 (DB) and held in paragraphs-19 and 20 as under:

19. It was also held in the further judgment of this Bench in *National Thermal Power Corporation, Vidyut Nagar, Ghaziabad v. State of U.P. and Another* 2007 (8) ADJ 665 (DB) as under:

We do not find any specific provision of law for making deduction from the market value on account of largeness in area or for development purposes, except for the law declared by the Courts. A welfare society cannot be doubly benefited by paying lesser amount of compensation by deducting development

charges from the market value and at the same time by realizing cost of the development from the ultimate purchasers of the land.

20. Previously the lands were being acquired for the public purpose. Now in many occasions the lands are being acquired in the garb of public purpose.

Previously zamindar or rich people were holding huge areas of lands. Even after independence large areas of lands were under the control of rich families. The legislature thought it fit to distribute such lands to the people at large, thereby several projects were launched. Therefore, lands were acquired for the public purpose in real sense. The present scenario is just reverse. Due to fast urbanisation, authority is acquiring land even from the small plot holders on payment of meagre amount of compensation and making deduction even thereafter. This is not the equitable principle. There is marked distinction of life style between urban and rural areas. People of rural areas may not like to live in urban areas and vice versa. Therefore, they will be virtually pushed back. However, they have to settle afresh. Livelihood and rehabilitation of many land losers may be dependable fully upon the compensation. Therefore, in the changed circumstances, the definition of public purpose is to be understood with utmost importance. If we become forgetful, we shall welcome future anarchy.

84. Coming back to the question of dispensation, we see it requires immediate need of a land due to natural calamities or for maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity etc..

85. At best, scope can be extended upto immediate visible need of public purpose. However, in Uttar Pradesh not only planned development can be said to be for public purpose but also matter of urgency as per sub-section (1-A) of Section 17 of the Act introduced by way of U.P. Amendment. Therefore, if planned development is urgently needed, there is no bar. But in the instant cases, though the policy was made in the year 2003, the scheme was floated and notice has been given under the Act, 1973 for change of land use in the year 2005 but entire project is not complete as yet, otherwise no occasion could have arisen for making writ petitions even now not only for enhancement of compensation but also for derequisition. So far as the construction is concerned, it has been said that development work is going on. It is true to say that this type of project cannot be made overnight. But when from 2002 till 2011 the project is under contemplation of completion, it cannot be treated to be an overnight action to apply the urgency clause. Stand of the State is that hearing of individual land owner/s will take lot of time following Nand Kishore Gupta (supra) and secondly, when out of total land area of hundreds acres acquired upon payment of compensation only few land owners for an area of about few acres land filed the writ petitions to stall the proceedings, whether at this stage question of invocation of urgency clause can be reopened or not following Anand Singh (supra). Import of Devendra Kumar and others (supra) is that land/tenure holders, living in the rural areas of the country, base their source of life on the

lands and produces of such land, therefore, they should not be made landless and forced to live in slum areas without any mechanism of alternative source of livelihood. This is one-side of the coin. Let us see other side of the coin. India is divided into two i.e. urban area and rural area. Urban India is grasping the rural area outside its periphery. A person, whose cultivable lands are outside the periphery of urban area, is becoming victim of the circumstances. Such type of lands are marginally rural and marginally urban and the land owners of those areas are also mentally divided into two i.e. whether they will live like urbanized people after having good amount of compensation, solatium, alternative accommodation, etc. or they will live like rural people. It is also very difficult for the land owners to cultivate the land within the urbanised or semi urbanised areas. Further, the middlemen or land brokers are giving them high hope about better price of the land if sold privately or to claim more compensation. Such type of land owners are maximum in number in the locality. They cannot be equated with marginal farmers. The life style of the land owners/ occupiers of those areas cannot be equated with the land owners/occupiers of other parts of the country. If they cannot be called as affluent, they cannot be called as marginal to create broad distinguishing feature between have and have nots. If enquires are made, it will be seen that many lands are sold or assigned to private parties on several times.

86. Further, we are aware that barren lands are likely to be utilized for such purposes and if no such land is available then only the question of acquisition of agricultural lands might arise. But when the Act, 1985 came into force incorporating several areas under the respective schedules outside the periphery of the National Capital, it extended horizontally without making any demarcation between the urban and agricultural land. The Act, 1985 is not under challenge nor it could be at this juncture when lot of planned developments have been actuated with the approval of the appropriate authority under such Act. Trend of land owners of such locality is to sell the lands to private parties to get better price or bargain with the State on any acquisition because they are fully aware that the amount of money they will receive by the sale or by bargaining compensation for acquisition of the land will not be equated with their earnings from the sale of agricultural produces for years together. Some meddlesome people have become very much active in those areas. Sometimes they are in favour of acquisition to get the benefit, sometimes they oppose the acquisition also to get the benefit and create the situation of clash between the land owners and the authorities even before or after getting the compensation. Such type of people are playing with fire. Sometimes situation of bloodshed is occurring. Unless those are stopped, this type of disputes will perpetuate and flood the Court of law with additional duty to spell out genuine litigants and unscrupulous litigants.

87. Therefore, we are of the view that there is utmost necessity of hearing the petitioners by the State authority making the same as time bound following the principle of Section 5-A(2) of the Act. We have applied and tested such process

in the cases of land acquisition made for the Uttar Pradesh State Industrial Development Corporation (UPSIDC) at Bulandshahar, another scheduled area under the Act, 1985, outside the periphery of Greater Noida and we have become successful. It is also applied to other districts.

88. Against this background, we make a time bound programme to complete the course of action and to protect the interest of land owners or occupiers vis-a-vis the interest of the State agency in the following manner.

89. The petitioner/s will make their application before the Collector within a period of fifteen days from the date of obtaining certified copy of this order, if not already made to him. Upon receipt of such application/s, the Collector will independently adjudge the demand of the petitioner/s about settlement of compensation and if necessary, he will also make survey of the land to support his independent view. He will also give an opportunity of hearing to all the petitioners. The petitioners will be able to take assistance of the pleader. The Collector will complete all exercise to make his report and sent the entire report to the State Government, for taking final decision in this regard, within a period of 21 days from the date of making application/s and in case the application has already been made, such period of 21 days will be counted after expiry of period of fifteen days granted for making applications. The State Government, who is the final authority, upon receipt of report will take a decision in the matter within a period of one month thereafter positively. The decision of the State will be final and binding upon all the parties. Physical possession of the land of the petitioners, if not taken by the Ghaziabad Development Authority, will be taken after completion of the course of action, as directed by this order, with regard to settlement of compensation to be paid to the petitioners. If this approach is made and, the compensation amount is considered and if the petitioners are inclined to take compensation, it will be considered finally by following the Rules, 1997. Making of such applications, if any, for settlement will be totally optional on the part of the petitioner/s. If any unwilling petitioner wants to take advantage of Section 11-A of the Act or u/s 48 of the Act, it is open for him to proceed accordingly. Such petitioner can also make appropriate applications before the authority concerned for due consideration of the cause u/s 11-A and/or Section 48 of the Act, as the case may be, and a separate report will be prepared by the Collector and/or the authority concerned and the same will be sent to the State for the purpose of taking final decision. In case they become successful, immediate steps will be taken by the authority in accordance with law. If not, they will not be debarred from getting compensation following the same principle.

90. With the above observations and order, the remaining writ petitions relating to Villages Naifal, Bayana, Shahpur Bamhetta and Sadikpur @ Kazipura are disposed of, however, without imposing any cost.

I agree.